(1)

Supreme Court, U.S.
FILED

Nº. 04 764 NOV 29 2004

In The
Supreme Court of the United States

PATRICK D. BRENNAN AND BEDELLA M. BRENNAN
Petitioners,

v.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY AND SUPERVISOR OF WELLS,
Respondent.

On Petition For A Writ Of Certiorari From The Supreme Court of the State of Michigan

PETITION FOR A WRIT OF CERTIORARI
with Appendix

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November, 2004

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QUESTIONS PRESENTED

Do the decisions by the Michigan Supreme Court and Michigan Court of Appeals deny Plaintiffs of their real property interest without just compensation contrary to the United States Constitution, Amendments V & XIV?
(Reproduced in Appendix F-1 and G-1)

Was the determination of the Supervisor of Wells ripe for Judicial review?

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Patrick D. Brennan and Bedella M. Brennan respectfully request that this Honorable Court issue a Writ of Certiorari to review the judgment entered in this case by the Supreme Court of the State of Michigan, affirming a decision by the Michigan Court of Appeals.

OPINIONS BELOW

The Order of the Michigan Supreme Court denying Petitioners' Application for Leave to Appeal reproduced in Appendix A-1. The Order of the Michigan Supreme Court denying Petitioners' Motion for Reconsideration is reproduced in Appendix B-1. The Opinion of the Michigan Court of Appeals reversing the Judgment of the Court of Claims reproduced in Appendix C-1. The Amended Judgment of the Court of Claims reproduced in the Appendix E-1. The determination of the Michigan

Department of Environmental Quality and Supervisor of Wells reproduced in the Appendix E-1.

JURISDICTION

The Order of the Michigan Supreme Court denying Leave to Appeal the September 20, 2003 judgment of the Court of Appeals was issued on April 30, 2004. A timely Motion for Reconsideration was denied by that Court on August 31, 2004. This Court has jurisdiction under 28 U.S.C. § 1257 (a). (Reproduced in Appendix H-1). The original cause of action raises a question as to the unconstitutional taking of property.

STATEMENT OF THE CASE

This Petition for Writ of Certiorari involves a reverse condemnation in the context of developing oil and gas resources in Michigan. Essentially, the Petitioners' claim arose as the result of a final decision of the Michigan Supervisor of Wells to a.) deny inclusion of Petititoners' land in what is commonly known as a Uniform Spacing Plan (hereinafter USP) and b.) because of that denial, the Petitioners' were precluded of the right to drill an Antrim Shale formation well on their property. The first denial is a matter of fact. The second denial is as a matter of law.

The Petitioners' are the owners of a 40-acre quarter-quarter section of land located in the Jordan Valley State Forest, located in the northwest corner of Michigan's lower peninsula. Petitioners' land is completely surrounded by

land owned by the State of Michigan and administered by the Michigan Department of Natural Resources (hereinafter MDNR). At all times relevant to this action it was the policy of the MDNR not to permit exploration and development of oil and natural gas on or associated with its lands in the Jordan Valley State Forest. (Reproduced in Appendix N-1) On June 20, 1995, the Respondent, Supervisor of Wells issued an Order (Order No. (A) 14-9-94, Appendix M-1). This Order is commonly known as the Antrim Spacing Order and concludes as a matter of law that forty (40) acre drilling units for Antrim gas create waste in the drilling of unnecessary wells and in excessive surface disturbance. (Findings of Fact 9 and Conclusion of Law 2, Appendix M-10-11 and M-30) In addition, the Order concludes that an individual Antrim gas well or a Antrim gas well on a drilling unit of less that eighty (80) acres is rarely economical or economical to produce by itself.

(Findings of Fact 5 and 16 and Conclusion of Law 3, Appendix M-6-7, M-19-22, M-30-31)

In 1997, a petition was presented to the Respondent, Supervisor of Wells, by a gas well operator who was also Petitioners' lessee, pursuant to an oil and gas lease of the Petitioners' land. Said petition requested that the Supervisor of Wells, pursuant to the Antrim Spacing Order referenced above, compulsory pool certain lands whose owners had not voluntarily agreed to join in a unitization plan for the development of the Antrim Shale formation natural gas, including State of Michigan lands contiguous to Petitioners' lands and also located within the Jordan Valley State Forest. Specifically, the petition was for a

Uniform Spacing Plan[1] (hereinafter USP), which would include the Petitioners' land.

According to Finding of Fact 16 Order No. (A) 14-9-94 (Appendix M-19 – M-22) the basic unit for an Antrim Shale formation is governmental quarter-quarter sections of land which must be contiguous on at lease one side with one or more other quarter-quarter sections of land in the USP.

When the petition to the Supervisor of Wells was filed, Petitioners' land was included in the proposed USP. The Petitioners' land was contiguous to the balance of the proposed USP by virtue of State of Michigan land to the

[1] A uniform Spacing Plan is a creature of the Michigan Oil and Gas Act (MCL § 324.61513; MSA 13A.61513) and is appropriately described as an area developed by multiple oil and/or gas wells according to a plan approved by the Supervisor of Wells. (Reproduced in Appendix I-1)

west. The Petitioners did not attend the hearing on the petition. The petition stated that its express purpose was to compulsory pool tracts of land that had not volunteered to join with the balance of lands into a proposed USP. (Reproduced in Appendix O-1) The Petitioners had already volunteered to join their lands with the other proposed USP lands and were not opposed to the compulsory pooling of the lands of third-parties, and hence did not appear or enter an appearance at the hearing.

The Supervisor of Wells ruled, without notice to the Petitioners or any other party not in attendance and contrary to the holding of the Administrative Law Judge presiding at the hearing (Lines 1-6, page 8, Appendix P-17-18 (transcript), that this petition would be enlarged in scope to consider exclusion of certain lands from the proposed USP. Some of the lands excluded from the proposed USP were

the State of Michigan lands which provided contiguity with the Petitioners' lands and the balance of lands of the proposed USP.

The Supervisor of Wells authorized such exclusion with the full knowledge that the Petitioners' 40 acre tract would now be isolated from development of its natural gas resource. The Respondent, Supervisor of Wells, also considered the inclusion of Petitioners' land in the proposed USP as an exception to the contiguity requirement and declined to grant such exception. (Findings of Fact 2 and 4, Appendix L-4-7 and L-10-13 (A) 14-5-97) As a result of the exclusion of the State owned land in the USP, the Petitioners' land was no longer contiguous to the balance of the proposed USP and because the Respondent, Supervisor of Wells, declined to grant an exception to the contiguity

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requirement of the Antrim Spacing Order the Petitioners' lands were not included in the USP.

Petitioners' land was not included in the USP even though Respondent, Supervisor of Wells had the full and complete knowledge that as a stand-alone forty (40) acre tract, Petitioners' land was condemned to a permanent state of non-development. As previously stated, Respondent, Supervisor of Wells, had already determined as a matter of law that to drill a well on a forty (40) acre tract would result in waste. (Appendix M-10-11 and M-30). Michigan statute MCL§324.61504; MSA§13(A)61504 (Reproduced in Appendix J-1) prohibits the Respondent, Supervisor of Wells from authorizing the drilling of a well that would result in waste.

Since the Petitioners did not receive notice from the Respondent, Supervisor of Wells, that at the above referenced hearing the intent was to exclude certain lands from the USP, the Petitioners did not attend or file an appearance. MCL§24.271; MSA§3.560(171) (Reproduced in Appendix K-1) provides that a party shall be given a reasonable notice of the subject of the hearing. In the present case, the Notice of Hearing contained no notice that the exclusion of certain lands would be considered at the hearing (Appendix N-1).

Having not filed an appearance, nor having attended the hearing, the Petitioners did not have standing to appeal the Order of the Supervisor of Wells, (Michigan Department of Environmental Quality Rule 1204(6); Part 615, 1994PA451 Administrative Rules, R324.1204 excluding their lands from the USP.

The Petitioners commenced the present action against the Supervisor of Wells and Department of Environmental Quality on the theory of inverse condemnation.

Subsequent to Respondents being served with Petitioners' Complaint, the time for filing an answer or other responsive pleading, as provided by the Court Rules, passed without a response from Respondents. Several days later, counsel for Respondents requested an extension from Petitioners of the time to file an answer. The Petitioners granted Respondents' counsel a ten (10) day extension. The Respondents again failed to file and serve a timely response. Thereafter, Petitioners filed a notice of Default against the Respondents.

The Respondents successfully moved to set aside the Default. Petitioners appealed to the Michigan Court of Appeals to reverse the setting aside of said Default. The Court of Appeals responded by reinstating the Default of Respondents. (Reproduced in Appendix D-1) The Petitioners claim proceeded to trial on the issues of damages. At the Trial in this matter the trial Court awarded Petitioners a judgment in the amount of $1,680,981.00.

The Michigan Department of Environmental Quality and the Supervisor of Wells appealed the $1,689,981.00 judgment to the Michigan Court of Appeals. The Michigan Court of Appeals held that the Petitioners' claim before the Court of Claims was not ripe for adjudication and held:

"In the present case, we find that the action is not ripe for review. The supervisor, in determining whether plaintiffs' land could be part of the proposed USP, applied its previous spacing order. In doing so, the supervisor determined that plaintiffs' land failed to meet the requirement of the spacing order concerning the sharing of one common boundary of approximately 1,320 feet with other lands in the proposed USP. Further, the supervisor declined the petitioner's request to accept plaintiffs' land as an exception to the boundary requirement. Consequently, the supervisor declined to include plaintiffs' land in the USP by excepting it from the boundary requirement. Plaintiffs maintain that their inverse condemnation claim is ripe because their land was excluded from the USP under these circumstances and in light of the fact that the spacing order rules that 40-acre tracts of land cannot be developed because they constitute waste. However, the spacing order expressly provides that "[e]xceptions to the spacing and location requirements of the [o]rder may be granted after notice and hearing." We have found nothing in the record indicating that plaintiffs sought an exception to the application of the

supervisor's spacing order with respect to the development of their 40-acre tract of land separate from the USP,[4] and thus there is no finality. In other words, even though plaintiffs' land was excluded from the USP, they still had the option to develop it separate from the USP by petitioning for an exception from the spacing order. Because no application was made, it is not certain that a final, definite position on plaintiffs' land has been made by the supervisor and therefore, plaintiffs' claim is not ripe for judicial review. (emphasis added)

REASONS FOR GRANTING THE WRIT

A. THE MICHIGAN SUPREME COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW IN A WAY THAT CONFLICTS WITH DECISIONS OF THE UNITED STATES SUPREME COURT.

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[4] Indeed, early on in the action the trial court observed that "[I]t's interesting to note that never have . . . plaintiffs on their own petitioned the Supervisor of Wells for any determination with respect to its own- or their own parcel.

In *Palazzolo v. Rhode Island et al.*, 121 S.Ct. 2448, 533 U.S. 606, 617, 150 L.Ed.2d 592 (2001) the United States Supreme Court Stated:

"[1] [2] [3] The Takings Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, Chicago, B. & Q.R. Co. v. Chicago, 166 U.S. 226, 17 S.Ct. 581, 41 L.Ed. 979 (1897), prohibits the government from taking private property for public use without just compensation."

In the present case, the decision by the Supervisor of Wells, in view of his prior ruling that 40 acre drilling units constitute waste as a matter of law, to exclude the Petitioners' quarter-quarter section from the Uniform Spacing Plan amounted to an unconstitutional taking under

the Fifth Amendment through the Fourteenth Amendment of the Untied States Constitution.

The Michigan Court of Appeals has ignored two facts that make the decision of the supervisor of Wells a final unalterable decision as it relates to Petitioner's property. The first is that the Supervisor has determined as a matter of law, not of fact but of law, that to drill a well on a forty acre parcel such as Petitioners' would result in waste (Appendix M-10 and M-30). Secondly, that the Michigan legislature gave the Supervisor no discretion; the Supervisor is explicitly prohibited from authorizing the commission of waste related to oil or gas development or production. MCL§324.61504; MSA§13(A)61504. As such the drilling of a well on Petitioners property would as a matter of law result in the commission of waste. The Supervisor as a matter of law is precluded from authorizing

the drilling of a well on Petitioners' property. Petitioners' as a matter of law cannot obtain from the Supervisor of Wells, an exception to the 80 acre unit requirement of the Antrim Spacing Order to drill a well on their 40 acre property. The final unalterable result of the Supervisor's decision to exclude Petitioners' 40 acre tract from the USP was to cause a taking of Petitioners mineral interest without any compensation, let alone without just compensation.

In *Williamson County Regional Planning Commission et al., v Hamilton Bank of Johnson City*, 105 S. Ct. 3108, 473 U.S. 172, 186, , 87 L.Ed.2d 126 (1985) the Court held,

"[A] claim that the application of government regulations effects a taking of a property interest is not ripe until the governmental entity charged with implementing the regulations has reached a final

decision regarding the application of the regulations to the property at issue."

In the present case, the decision of the Supervisor of Wells, in view of prohibition and the Michigan statutes, has resulted in a final decision ripe for review.

The Supervisor of Wells determined that the lands owned by the State of Michigan were to be excluded from the proposed USP. This decision destroyed the contiguity the Petitioners' needed in order to maintain the inclusion of their 40 acre tract in the USP. The Petitioners, through their agent lessee, sought an exception to the contiguity requirement and this was denied. The Michigan Court of Appeals and the Michigan Supreme Court, by its failure to review the issues, found that this matter is not ripe for review because the Petitioners could have sought an exception to the application of the Supervisor of Wells' Antrim Spacing Order.

This in essence was a false option. As outlined previously in this Petition, the Antrim Spacing Order that governs the placement of wells provides as a matter of law that stand alone forty (40) acre drilling units create waste and Michigan Statute MCL§324.61504; MSA§13(A)61504 prohibits the Supervisor of Wells from authorizing the drilling of a well that would result in waste.

In discussing the standards that apply, the United States Supreme Court in *Palazzolo v Rhode Island et al.*, 121 S.Ct. 2448, 533 U.S. 606, 620-621, 150 L.Ed.2d 592 (2001) held:

"Under our ripeness rules a takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property, including the opportunity to grant any variances or waivers allowed by law. As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and a regulatory

taking has not yet been established. See Suitum, supra, at 736, and n. 10, 117 S.Ct. 1659 (noting difficulty of demonstrating that "mere enactment" of regulations restricting land use effects a taking). Government authorities, of course, may not burden property by imposition of repetitive or unfair land-use procedures in order to avoid a final decision. Monterey v. Del Monte Dunes at Montery, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999). (emphasis added)

In *Palazzola* at 620-621 (Supra) the test set forth is whether the landowner followed the reasonable and necessary steps to allow the regulatory body to exercise its discretion, including the opportunity to grant variances or waiver allowed by law. Here, the Michigan Supreme Court and Court of Appeals have ignored this principal. If a determination by the Supervisor of Wells has been made as a matter of law and to this determination is applied the clear mandate of the Michigan legislature, MCL§324.61504;

MSA§13(A)61504, a final decision ripe for review in the Courts is the only result. In its decisions, the Michigan Supreme Court and Court of Appeals are mandating that the Petitioners take the futile step of seeking an exception that has already been determined as a matter of law to constitute waste. In its written Decision the Court of Appeals of Michigan, as affirmed by the Supreme Court relied upon *Paragon Properties Company v. City of Novi*, 452 Mich 568, 583, 550 N.W.2d 772 (1996). In *Paragon* id at page 583 the Michigan Supreme Court rejected a futility argument.

In *Palazzolo v Rhode Island et al.*, 121 S.Ct. 2448, 533 U.S. 606, 621, 150 L.Ed.2d 592 (2001) the Court provided:

Government authorities, of course, may not burden property by imposition of repetitive or unfair land-use procedures in order to avoid a final decision. Montery v. De Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999).

Clearly, the Michigan Courts have ignored the above principle. By requiring the Petitioners to seek another exception, that is clearly contrary to and prohibited by the law of the State of Michigan, the Petitioners are saddled with the burden of unfair land-use procedures. A reasonable reading of *Paragon Properties v. Novi*, 452 Mich 568, 550 N.W.2d 772 (1996) suggests that the property owners can be required to keep resubmitting requests or ask for reconsideration until every infinitesimal option has been completely exhausted. In *Paragon* (Supra at pages 580-581) the Court provided:

While Paragon correctly characterizes Novi's rezoning denial as a legislative act rather than an administrative decision this distinction does not resolve the finality issue. Requiring Paragon to seek a variance from the zoning board of appeals after the city council's rezoning denial does not result in an invasion of the legislative authority of the city council to enact and amend zoning ordinances. That the zoning board of appeals does not have the statutory authority to amend a zoning ordinance does not render it incapable of offering an alternative for of relief to Paragon. [footnote omitted]

The rational for requiring the landowner to apply for a variance from the applicable zoning ordinance in *Paragon* (supra) for a use obviously otherwise authorized by law should not be confused with requiring Plaintiffs' here to seek an exception that is prohibited by law.

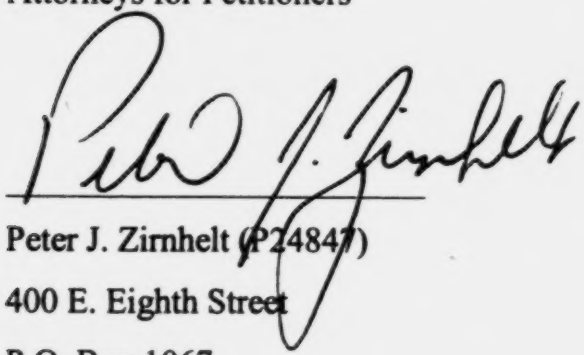
The requirement of the Michigan Supreme Court and Court of Appeals is contrary to rational principles opined in *Palazzolo*. Specifically, the landowner is only required to take steps to allow the regulatory agency to grant any variance or waiver allowed by law. (id at page 620-621). As previously stated, the Michigan Court decisions at issue here are requiring the Petitioners' to seek a variance that is expressly disallowed as a matter of law. This extra step is futile and is contrary to the standards established in *Palazzolo v. Rhode Island et al.*, 121 S.Ct. 2448, 533 U.S. 606, 620-621, 150 L.Ed.2d 592 (2001). The Petitioners have been denied the use of their property and the decisions heretofore entered are final and ripe for determination.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

PETER J. ZIRNHELT, P.C.

Attorneys for Petitioners'



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ORDER MICHIGAN SUPREME COURT

Entered: April 30, 2004 Lansing, Michigan

124985

Maura D. Corrigan
Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markham,
Justices

PATRICK D. BRENNAN, and
BEDELLA M. BRENNAN,
Plaintiffs-Appellants,

v

DEPARTMENT OF
ENVIRONMENTAL QUALITY
and SUPERVISOR OF WELLS,
Defendants-Appellees.

SC: 124985
COA: 235196
Ct of Claims: 98-017038-CM

/

On order of the Court, the application for leave to appeal the September 30, 2003 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

*l*0427

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 30, 2004 /s/ Corbin R. Davis

Clerk

ORDER MICHIGAN SUPREME COURT

Entered: August 31, 2004 Lansing, Michigan

124985 (75)

Maura D. Corrigan

Chief Justice

Michael F. Cavanagh

Elizabeth A. Weaver

Marilyn Kelly

Clifford W. Taylor

Robert P. Young, Jr.

Stephen J. Markham,

Justices

PATRICK D. BRENNAN, and

BEDELLA M. BRENNAN,

Plaintiffs-Appellants,

v

DEPARTMENT OF

ENVIRONMENTAL QUALITY

and SUPERVISOR OF WELLS,

Defendants-Appellees.

SC: 124985

COA: 235196

Ct of Claims: 98-017038-CM

/

On order of the Court, the motion for reconsideration of this Court's order of April 30, 2004 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

t0824

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 31, 2004 /s/Corbin R. Davis

Clerk

STATE OF MICHIGAN

COURT OF APPEALS

PATRICK D. BRENNAN and BEDELLA M. BRENNAN,

Plaintiffs-Appellees,

v

DEPARTMENT OF ENVIRONMENTAL QUALITY and SUPERVISOR OF WELLS,

Defendants-Appellants.

UNPUBLISHED

September 30, 2003

No. 235196

Court of Claims

LC No. 98-017038-CM

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

In this inverse condemnation case, defendants appeal as of right from the trial court's order, after a bench trail, granting plaintiffs damages in the amount of $1,680,981, with post-judgment interest at the rate of 12 percent. We vacate the trail court's order and remand this case to the trial court for dismissal of the claim.

Plaintiffs are owners of a 40-acre tract of land in Jordan Township, Antrim County. Plaintiffs' land was proposed for inclusion in a uniform spacing plan[1] (USP) known as Jordan 35 USP, for production from the Antrim Shale Formation. However, the petitioner[1] for the USP

[1] A uniform spacing plan is a combination of property into a unit of development for oil or gas production that gives the operator flexibility regarding well location.
[1] The petitioner is O.I.L. Energy Corporation.

voluntarily removed, pursuant to the Department of Natural Resources' request, the state of Michigan unleased lands that provided contiguity between plaintiffs' land and other proposed USP land. Thus, consistent with the Antrim Shale Formation spacing order, Order No. (A) 14-9-94 ("spacing order),[3] the Supervisor of wells (supervisor), in Order No. (A) 14-5-97 ("the USP order"), excluded plaintiffs' land because it did not share one common boundary of approximately 1,320 feet with other lands in the proposed USP. Further, the supervisor declined the petitioner's request to accept plaintiffs' land as an exception to the boundary requirement because no surface access to plaintiffs' land via adjoining parcels meant that plaintiffs' land "cannot be drained by existing or proposed wells." Thereafter, plaintiffs filed the instant action claiming inverse condemnation of their land.

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[3] The spacing order governs the location and spacing of wells and the development of units or pooled areas in the Antrim Shale Formation in twenty-two Michigan Counties.

Defendants first argue on appeal that "[t]he trail court lacked subject matter jurisdiction because the action was not ripe due to plaintiffs' failure to obtain finality from [the] MDEQ [Michigan Department of Environmental Quality] prior to seeking judicial resolution of a regulatory taking issue." In other words, defendants contend, in essence, that this case was not properly before the trial court because plaintiffs failed to obtain a final determination from a governmental agency before seeking judicial recourse. We agree.

"[A] claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulation has reached a final decision regarding the application of the regulations to the property at issue." *Williamson Co Regional Planning Comm v Hamilton Bank*

of Johnson City, 473 US 172, 186; 150 S Ct 3108; 87 L Ed 2d 126 (1985); *Electro-Tech, Inc v H F Campbell Co,* 433 Mich 57; 445 NW2d 61 (1989) (adopting the ruling in *Williamson* that in an action under 42 USC 1983 for damages resulting from an unconstitutional regulatory taking, a decision of an administrative body must be "final" before it is judicially reviewable); *Lake Angelo Assoc v White Lake Twp,* 198 Mich App 65, 69-72; 498 NW2d 1 (1993) (extending the finality requirement to regulatory taking claims, whether framed as a violation of the Just Compensation Clause of the Fifth Amendment or of the Due Process Clause of the Fourteenth Amendment, not just to actions based on 42 USC 1983.). "[T]he finality requirement is concerned with whether the initial decision maker has arrived at a definitive position on the issue that inflicts an actual, concrete injury." *Williamson, supra* at

193. "The purpose of the finality requirement is to ensure that there actually was a taking." *Paragon Properties Co v City of Novi,* 206 Mich App 74, 76-77; 520 NW2d 344 (1994), aff'd 452 Mich 568; 550 NW2d 772 (1996). "Finality is relevant to subject-matter jurisdiction ...." *Paragon, supra* at 206 Mich App 77.

In the present case, we find that the action is not ripe for review. The supervisor, in determining whether plaintiffs land could be part of the proposed USP, applied its previous spacing order. In doing so, the supervisor determined that plaintiffs land failed to meet the requirements of the spacing order concerning the sharing of one common boundary of approximately 1,320 feet with other lands in the proposed USP. Further, the supervisor declined the petitioner's request to accept plaintiffs' land as

an exception to the boundary requirement. Consequently, the supervisor declined to include plaintiffs' land in the USP by excepting it from the boundary requirement. Plaintiffs maintain that their inverse condemnation claim is ripe because their land was excluded from the USP under these circumstances and in light of the fact that the spacing order rules that 40-acre tracts of land cannot be developed because they constitute waste. However, the spacing order expressly provides that "[e]xceptions to the spacing and location requirements of the [o]rder may be granted after notice and hearing." We have found nothing in the record indicating that plaintiffs sought an exception to the application of the supervisor's spacing order with respect to the development of their 40-acre tract of land separate from

the USP,[4] and thus there is no finality. In other words, even though plaintiffs' land was excluded from the USP, they still had the option to develop it separate from the USP by petitioning for an exception from the spacing order. Because no application was made, it is not certain that a final, definite position on plaintiffs' land has been made by the supervisor and therefore, plaintiffs' claim is not ripe for judicial review.

Plaintiffs' assert that defendants "have admitted by reason of their default, that the effect of their regulation is to eliminate the value of [p]laintiffs' property." In other words, plaintiffs claim that this action is properly within the judiciary by virtue of the defendants' default. However,

[4] Indeed, early on in the action the trial court observed that "[I]t's interesting to note that never have . . . plaintiffs on their own petitioned the Supervisor of Wells for any determination with respect to its own-or their own parcel."

because there was no finality where plaintiffs failed to pursue an exception to the supervisor's spacing order, plaintiffs' claim is not ripe. Ripeness is relevant to subject matter jurisdiction, and without jurisdiction, the default is void. See *Todd v. Dep't of Corrections, 232* Mich App 623,628; 591 NW2d 375 (1998) ("When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void."); *Banner v Banner,* 45 Mich App 148, 153: 206 NW2d 234 (1973) ("A judgment entered by a court without subject-matter jurisdiction is a void judgment and may be vacated at any time on the court's own motion or upon the motion of any party thereto..."). Plaintiffs' action is premature, and thus should have been dismissed.

In light of our disposition with respect to finality,

we do not reach the other issues raised on appeal.

Vacated and remanded for further action consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerlad

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell

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Court of Appeals of Michigan.

Patrick D. BRENNAN and Bedella M. Brennan, Plaintiffs-Appellants,
v.
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, Defendant-Appellee.

No. 216093.

March 10, 2000.

Before: WHITBECK, P.J., and HOEKSTRA and OWENS, JJ.

PER CURIAM.

***1** Plaintiffs appeal as of right from the trial court's orders granting defendant's motions to set aside default and for summary disposition pursuant to MCR 2.116(C)(10). We reverse.

Plaintiffs argue that the trial court abused its discretion in

setting aside the default entered against defendant. We agree. We review a court's decision to set aside a default for an abuse of discretion. *Alken-Ziegler, Inc v. Waterbury Headers Corp*, 461 Mich. 219, 227; 600 NW2d 638 (1999); *Park v. American Casualty Ins Co*, 219 Mich.App 62, 66; 555 NW2d 720 (1996). An abuse of discretion exists only when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will, defiance of judgment, passion or bias. *Alken-Ziegler, supra.* Further, whether the trial court abused its discretion in setting aside the default hinges on an interpretation of a court rule, which is a question of law that we review de novo. *Grzesick v. Cepela*, 237 Mich.App 554, 559; 603 NW2d 809 (1999). "When a court incorrectly chooses, interprets, or applies the law, it commits legal error that the appellate court is bound to correct."

Fletcher v. Fletcher, 447 Mich. 871, 881; 526 NW2d 889 (1994); *Bracco v Michigan Technological University*, 231 Mich.App 578, 585; 588 NW2d 467 (1998)

While the law favors determination of claims on the merits, the policy of this state is generally against setting aside properly entered defaults and default judgments. *Alken-Ziegler, supra* at 229. Pursuant to MCR 2.603(D)(1), "[a] motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." See also *Alken-Ziegler, supra* at 223, 233.

When addressing whether to set aside the default in the present case, the trial court focused on the latter requirement of a meritorious defense. The court determined that defendant presented a dispositive, meritorious defense.

Having found such, the trial court concluded that manifest injustice would result unless the court granted defendant's motion to set aside the default. This is the same analysis that this Court applied in *Alken-Ziegler, supra,* but which our Supreme Court determined to be erroneous. *Id.* at 226, 229.

According to our Supreme Court, a manifest injustice inquiry may not blur the *separate* inquiries of good cause and meritorious defense. *Alken-Ziegler, supra* at 229, 231. Instead, manifest injustice is the result that would occur if a default were allowed to stand where a party has satisfied both the good cause and meritorious defense requirements of MCR 2.603(D)(1). *Id.* at 233. Depending on the strength of the meritorious defense demonstrated by a party, a lesser showing of good cause may be required in order to prevent manifest injustice. *Id.* at 233-234.

In the present case, defendant failed to fulfill the first requirement-good cause. The good cause inquiry under MCR 2.603(D)(1) may be established by demonstrating either a substantial irregularity or defect in the proceeding on which the default is based, or a reasonable excuse for failure to comply with the requirements that created the default. *Id.* at 233. Here, defendant makes no claim with respect to the first basis for showing good cause. Rather, defendant proffered its counsel's busy schedule as good cause to set aside the default. However, this Court has repeatedly stated that a busy schedule is not a valid excuse for failing to meet a filing deadline such that a default can be set aside on grounds of good cause. *Daugherty v. State of Michigan*, 133 Mich.App 593, 598; 350 NW2d 291 (1984), citing *Midwest Mental Health Clinic, PC v Blue Cross & Blue Shield of Michigan*, 119 Mich.App 671, 674-675; 326 NW2d 599 (1982) ("[A] busy schedule and a heavy caseload do not constitute a

reasonable excuse for failure to file a timely answer"); see also *Mission Investment Co v. Perfect Totalisator Corp*, 51 Mich.App 376, 380; 214 NW2d 898 (1974). [FN1]

FN1. These cases were decided under GCR 1963, 520.4, the predecessor to MCR 2.603(D)(1). The two rules are essentially identical, with minimal changes not relevant here. Although *Alken-Ziegler, supra,* clarifies the existing rule, making the manifest injustice analyses in these cases questionable, we conclude that it does not negate previous determinations that busy schedules do not constitute good cause.

*2 In light of the foregoing, we need not determine whether defendant has a meritorious defense, because both good cause *and* a meritorious defense must be shown before a default judgment may be set aside. MCR 2.603(D)(1); *Alken-Ziegler, supra* at 229. Even assuming

defendant has a meritorious defense, defendant is not entitled to the setting aside of the default, having failed to show good cause. Consequently, we find that the trial court abused its discretion in setting aside the default, and thus we reverse.

Because our determination on this issue is dispositive, we do not reach the other issues raised by plaintiffs.

Reversed.

2000 WL 33522359 (Mich.App.)

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

PATRICK D. BRENNAN, and

BEDELLA M. BRENNAN,

Plaintiffs,

AMENDED JUDGMENT

File No. 98-17038-CM

v

MICHIGAN DEPARTMENT OF

ENVIRONMENTAL QUALITY and

THE SUPERVISOR OF WELLS,

Defendants.

_____/

NUNC PRO TUNC TO 27 JUNE, 2001

At a session of said Court held in the City of Lansing, Ingham County, Michigan, on the 10 day of July, 2001, the Hon. Thomas L. Brown presiding.

The liability of Defendants in this matter having been determined against them by reason of their default in answering Plaintiffs' First Amended Complaint, and this action having been tried before the bench on April 3, 5, 6, 23, and 24, 2001, and the Court having rendered its opinion for the reasons stated on the record, and the Court having issued a Judgment on June 27, 2001; IT IS ORDERED that said Judgment is amended as follows:

1. On Plaintiffs' claim for damages incurred by reason of Defendants' inverse condemnation of Plaintiffs' mineral interest, the Court finds that Plaintiffs have incurred damages in the amount of $1,680,981.00. Accordingly, judgment of said amount shall be and is hereby entered in favor of Plaintiffs Patrick D. Brennan and Bedella M. Brennan against Defendants.

2. Said judgment shall bear interest calculated

from the date of the filing of Plaintiffs' Complaint, being August 7, 1998, to the date of entry of this judgment at the following rates of interest for the listed time periods compounded annually:

August 7, 1998, to December 31, 1998:	6.601%
January 1, 1999, to June 30, 1999:	5.8335%
July 1, 1999, to December 31, 1999:	6.067%
January 1, 2000, to June 30, 2000:	6.7563%
July 1, 2000, to December 31, 2000:	7.473%
January 1, 2001, to June 27, 2001:	6.965%

3. The sum of said judgment plus interest thereon, as calculated pursuant to Paragraph 2 above, shall bear interest calculated from the date of entry of this judgment until the date this judgment is satisfied, at the rate of 12% per annum compounded annually.

4. Plaintiffs shall submit a bill of costs for those costs authorized by statute and /or court rule in

the manner provided by MCR 2.625, and such costs shall be in addition to the sums provided in Paragraphs 1, 2, and 3 above.

5. In accordance with MCL 600.6458; MSA 27A.6458, said judgment, plus interest and costs provided herein, shall be paid from the State of Michigan appropriation of the Michigan Department of Environmental Quality.

6. Pursuant to MCR 2.602(A)(3), this judgment, while resolving Plaintiffs' last pending claim, does not close this case for the reason that post-judgment motions and proceedings arising out of the mediation of this matter will be forthcoming.

IT IS SO ORDERED

/s/Hon. Thomas L. Brown

Hon. Thomas L. Brown

Circuit Judge

Amendment V. Grand jury indictment for capitol crimes; double jeopardy; self- incrimination; due process of law; just compensation for property

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV. Citizenship; privileges and immunities; due process; equal protection; apportionment of representation; disqualification of officers; public debt; enforcement

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizen of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Untied States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

§ 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statues of, or any commission held or authority exercised under, the United States.

324.61513. Apportionment of allowable production, basis

Sec. 61513. (1) When, to prevent waste, the total allowable production for any oil or gas field or pool in the state is fixed in an amount less than that which the field or pool could produce if no restriction were imposed, the supervisor shall prorate or distribute on a reasonable basis the allowable production among the producing wells in the field or pool, to prevent or minimize reasonably avoidable drainage from each developed area which is not equalized by counter drainage. The rules or orders of the supervisor, so far as it is practicable to do so, shall afford the owner of each property in a pool the opportunity to produce his or her just and equitable share of the oil or gas in the pool, being an amount, so far as can be practicably determined and obtained without waste, and without reducing the

bottom hole pressure materially below the average for the pool, substantially in the proportion that the quantity of the recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for this purpose to use his or her just and equitable share of the reservoir energy. A well in a pool producing from an average depth of 1,000 feet or less, on the basis of a full drilling unit as may be established under this section, shall be given a base allowable production of at least 100 barrels of oil per well per week; for a well in a pool producing from an average depth greater than 1,000 feet, the base allowable production shall be increased 10 barrels per well per week for each addition 100 feet of depth greater than 1,000 feet, if the allowable production is or can be made without surface or underground waste.

(2) To prevent the drilling of unnecessary wells, the supervisor may establish a drilling unit for each pool. A drilling unit, as described in this subsection, is the maximum area that may be efficiently and economically drained by 1 well. A drilling unit constitutes a developed area if a well is located on the drilling unit that is capable of producing the economically recoverable oil or gas under the unit. Each well permitted to be drilled upon any drilling unit shall be located in the approximate center of the drilling unit, or at such other location on the drilling unit as may be necessary to conform to a uniform well spacing pattern as adopted and promulgated by the supervisor after due notice and public hearing, as provided in this part.

(3) The drilling of unnecessary wells is hereby declared waste because unnecessary wells create fire and other

hazards conducive to waste, and unnecessarily increase the production cost of oil and gas to the operator, and therefore also unnecessarily increase the cost of the products to the ultimate consumer.

(4) The pooling of properties or parts of properties is permitted, and, if not agreed upon, the supervisor may require pooling of properties or parts of properties in any case when and to the extent that the smallness or shape of a separately owned tract or tracts would, under the enforcement of a uniform spacing plan or proration or drilling unit, otherwise deprive or tend to deprive the owner of such a tract of the opportunity to recover or receive his or her just and equitable share of the oil or gas and gas energy in the pool. The owner of any tract that is smaller than the drilling unit established for the field shall not be deprived of the right to drill on and produce from that tract, if the drilling and production can be done without waste.

In this case, the allowable production from that tract, as compared with the allowable production if that tract were a full unit, shall be in the ratio of the area of the tract to the area of a full unit, except as a smaller ratio may be required to maintain average bottom hole pressures in the pool, to reduce the production of salt water, or to reduce an excessive gas-oil ratio. All orders requiring pooling described in this subsection shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract in the pooling plan the opportunity to recover or receive his or her just and equitable share of the oil or gas and gas energy in the pool as provided in this subsection, and without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed tract that is not equalized by counter drainage. The portion of the production allocated to the owner of each tact included in a drilling unit formed by

voluntary agreement or by a pooling order shall be consider as if it had been produced from the tract by a well drilled on the tract.

(5) Each well permitted to be drilled upon a drilling unit or tract shall be drilled at a location that conforms to the uniform well spacing pattern, except as may be reasonably necessary where after notice and hearing the supervisor finds any of the following:

(a) That the unit is partly outside the pool or that, for some other reason, a well at the location would be unproductive.

(b) That the owner or owners of a tract or tracts covering that part of the drilling unit or tract on which the well would be located if it conformed to the uniform well spacing pattern refuses to permit drilling at the regular location.

(c) That topographical or other conditions are such as to make drilling at the regular location unduly burdensome or imminently threatening to water or other natural resources, to property, or to life.

(6) If an exception under subsection (5) is granted, the supervisor shall take such action as will offset any advantage that the person securing the exception may have over other producers in the pool by reason of the drilling of the well as an exception, and so that drainage from the developed areas to the tract with respect to the exception granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his or her just and equitable share of the oil or gas in the pool as the share is set forth in this part, and to that end the rules and orders of the supervisor shall be such as will prevent or minimize reasonably avoidable

drainage from each developed area that is not equalized by counter drainage and will give to each producer the opportunity to use his or her just and equitable share of the reservoir energy.

(7) Minimum allowable production for some wells and pools may be advisable from time to time, especially with respect to wells and pools already drilled on May 3, 1939, when former Act No. 61 of the Public Acts of 1939 took effect, so that the production will repay reasonable lifting costs and thus prevent premature abandonment of wells and resulting wastes.

(8) After the effective date of any rule promulgated or order issued by the supervisor as provided in this part establishing the allowable production, a person shall not produce more than the allowable production

applicable to that person, his or her wells, leases, or properties, and the allowable production shall be produced pursuant to the applicable rules or orders.

P.A.1994, No. 451, § 61513, added by P.A.1995, No. 57, § 1, Imd. Eff. May 24, 1995.

324.61504. Waste prohibited

Sec. 61504. A person shall not commit waste in the exploration for or in the development, production, handling, or use of oil or gas, or in the handling of any product of oil or gas.

24.271. Opportunity to be heard; reasonable notice of hearing, necessity, contents; service of legislators

Sec. 71. (1) The parties in a contested case shall be given an opportunity for a hearing without undue delay.

(2) The parties shall be given reasonable notice of the hearing, which notice shall include:

(a) A statement of the date, hour, place, and nature of the hearing. Unless otherwise specified in the notice the hearing shall be held at the principal office of the agency.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is given, the initial notice may state the issues involved. Thereafter on application the agency or other party shall furnish a more definite and detailed statement on the issues.

(3) A member of the legislature shall not be privileged from service of notice or other process pursuant to this chapter except on a day on which there is a scheduled meeting of the house of which he or she is a member. However, a member of the legislature shall not be privileged from service of notice or

other process pursuant to this chapter on a day on which there is a scheduled meeting of the house of which he or she is a member, if such service of notice or process is executed by certified mail, return receipt requested.

Amended by P.A.1984m No. 28, § 1, Imd. Eff. March 12, 1984

STATE OF MICHIGAN

DEPARTMENT OF THE ENVIRONMENTAL

QUALITY

ORDER OF THE SUPERVISOR OF WELLS

IN THE MATTER OF

THE PETITION OF O.I.L. ENERGY CORP.)

FOR AN ORDER OF THE SUPERVISOR)

APPROVING A UNIFORM SPACING PLAN AND) ORDER NO.

COMPULSORY POOLING INTERESTS, IN PARTS) (A) 14-5-97

OF JORDAN TOWNSHIP, ANTRIM COUNTY,)

MICHIGAN.)

OPINION AND ORDER

On May 7, 1997, a contested case hearing was held before the Supervisor of Wells (Supervisor) pursuant to Part 615, Supervisor of Wells, Natural Resources and Environmental

Protection Act, 1994 PA 451, as amended (NREPA); MCL 324.61501, et seq., the administrative rules, 1996 MR 9, R 324.101 et seq., and the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.210 et seq., MSA 3.560 (101) et seq. The purpose of the hearing was to consider the Petition of O.I.L. Energy Corp. (Petitioner) requesting the approval of a proposed Uniform Spacing Plan (USP) for production from the Antrim Shale Formation (Antrim) pursuant to the applicable spacing order, Order No. (A) 14-9-94, and the compulsory pooling of all unleased interests in the USP.

FINDINGS OF FACT

1. By Petition dated March 5, 1997, Petitioner requests the Supervisor to establish a USP of 2,760 acres. At the hearing, the Petitioner amended its Petition to remove three (3) 40-acre

quarter-quarter sections: the NW ¼ of NE ¼; the SW ¼ of SE ¼; and the SE ¼ of SW ¼, all in Section 24, T31N, R6W, Jordan Township, Antrim County. The proposed USP, as amended, contains 2,640 acres, consisting of the real estate described as:

> SE ¼, and SW ¼ of the SW ¼ of Section 13; SW ¼, Section 14; all of Section 23; NW 1/4 , and SE ¼ of SE ¼ of Section 24; NW ¼, Section 25; all of Section 26; and all of Section 35, T31N, R6W, Jordan Township, Antrim County, Michigan (referred to hereinafter as the proposed USP).

Petitioner asks that it be named operator of the proposed USP. Petitioner also requests that all tracts and minerals

and unleased interests be pooled into the proposed USP.

2. The Department of Natural Resources (DNR), Real Estate Division, filed the only answer in this proceeding. The State of Michigan holds title to eighty (80) acres of unleased lands within the boundary of the requested USP area as originally described in the Petition. The DNR's unleased interests are described as the SW ¼ of SE ¼ and the NW ¼ of NE ¼ of Section 24. The DNR's answer stated its opposition to having such unleased interests compulsory pooled into the originally requested USP area. The DNR did not object to other state mineral interests, currently under oil and gas lease to the Petitioner, being included in the proposed USP. The Petitioner voluntarily removed the DNR's unleased interests from the proposed USP.

USPs are formed pursuant to and consistent with Order No. (A) 14-9-94. One of the requirements of a USP is set forth in Section 3A, Determination and Order, of Order No. (A) 14-9-94:

> "The proposed USP is formed by combining blocks of governmental surveyed quarter-quarter sections of land with one common boundary of approximately 1,320 feet with allowances being made for the differences in the size and shape of sections as indicated by official governmental survey plats."

Deletion of the DNR's unleased minerals results in the amended proposed USP not meeting the requirements in Section 3A, Determination and Order, of Order No. (A) 14-9-94 because of the SE ¼ of Section 13 and the SE ¼ of SE ¼ of Section 24 will not share one common boundary of

approximately 1,320 feet with other lands in the proposed USP. Petitioner has leases and adequate pooling agreements in the SE ¼ of Section 13 and the SE ¼ of SE ¼ of Section 24, and desires to include such tracts in the proposed USP area.

Petitioner asks that the Supervisor accept the amended Petition and establish the proposed USP as an exception to the 1,320 foot common boundary requirement of Order No. (A) 14-9-94. The DNR, through its counsel, did not object to the amendment of the Petition or to the establishment of the proposed USP as an exception to the 1,320 foot common boundary requirement.

In connection with amending its Petition, the Petitioner states that the SE ¼ of SW ¼ of Section 24 is owned privately and is not subject to an oil and gas lease. Petitioner's landman testified the owners thereof have

consistently expressed their opposition to leasing.

Petitioner included the SE ¼ of SW ¼ of Section 24 in the original USP description in order to comply with the 1,320 foot requirement as to the S ½ of SE ¼ of Section 24. There is no reason to include the SE ¼ of SW ¼ of Section 24 in the proposed USP if the SW ¼ of SE ¼ of Section 24 is deleted from the proposed USP. Section 4F, Determination and Order, of Order No. (A) 14-9-94 provides that:

> "Changes to a USP boundary shall require written approval by the Supervisor,"

and Section 8, Determination and Order, of Order No. (A) 14-9-94 provides that:

"Exceptions to the spacing and location requirements of this Order may be granted after notice and hearing."

The amendment to the original USP description has the effect of decreasing the size of the proposed USP. The Notice of Hearing for this proceeding stated the Supervisor would conduct a public hearing to consider adoption of a USP. The Notice of Hearing as published and mailed was of sufficient scope to cover the proposed USP area.

3. Petitioner's engineer testified:

a. Seventeen (17) Antrim wells have been drilled within the boundary of the proposed

USP, all of which penetrated productive intervals of Antrim.

b. All of the lands in the proposed USP are underlain by productive Antrim. No party presented evidence contrary to Petitioner's statements regarding the appropriate boundary of the proposed USP, nor to the assertion that all of the lands within the proposed USP are capable of Antrim production.

I find the proposed USP is comprised of 40-acre building blocks, all of which are contiguous (except as discussed in paragraph 2, Findings of Fact), and underlain by Antrim which is known to be capable of gas production, or is reasonably likely to be capable of gas production.

4. Petitioner's engineer testified as to the development plan and boundary of the proposed USP:

a. Petitioner intends to drill one Antrim well in the SE ¼ of Section 13. Production from that well will be piped to a separate Antrim gas project to the north, where gas from the well will be metered separately and allocated back to the proposed USP.

b. Petitioner does not have rights or agreements to provide for surface access via adjoining parcels to the SE ¼ of SE ¼ of Section 24. A well drilled on the tract could not be produced. The tract could not be reasonably drained by an existing or future well in the proposed USP.

c. Petitioner will drill an additional well in the NE ¼ of the NW ¼ of Section 25.

d. With the exception of the SE ¼ of SE ¼ of Section 24, lands in the proposed USP can be efficiently drained by existing and proposed wells.

e. All of the seventeen (17) existing and two (2) planned Antrim wells are at least 330 feet from the proposed USP boundary. All planned and existing wells are located at least 1,320 feet from the nearest well, except the Malpas D2-35 and D3-35 wells are approximately 1,089 feet apart. The wells were drilled at legal locations on 40-acre drilling units before the effective date of Order No. (A) 14-9-94. Petitioner requests an exception to the 1,320 foot

requirement for the distance between wells within the USP.

f. The proposed USP contains 2,640 acres, resulting in a well density of one well per 155 acres based on seventeen (17) existing wells.

I find the SE ¼ of Section 13 can be developed as:

(i) An independent 160-acre voluntarily-pooled unit pursuant to R 324.303, with a single well drilled at a location at least 330 feet from the boundary of the pooled area, or

(ii) Two 80-acre units pursuant to the provisions of Order No. (A) 14-9-94.

I find Petitioner did not provide adequate and convincing evidence to support an exception to the 1,320 foot common boundary requirement of Order No. (A) 14-9-94 and the SE ¼ of Section 13 should not be included in the proposed USP.

I find the SE ¼ of SE ¼ of Section 24 cannot be drained by existing or proposed wells, and should not be included in the proposed USP.

5. If the area of the proposed USP is reduced by exclusion of the SE ¼ of Section 13 and the SE ¼ of SE ¼ of Section 24, the resulting USP contains 2,440 acres. This results in a well density of one well per 136 acres based on seventeen (17) existing gas wells and one planned gas well. In Order No.

(A) 14-9-94, the Supervisor found that economics and reservoir drainage are generally optimized with a well density of between 80 and 160 acres per well. The Supervisor also found the maximum well density for a USP should be one well per 80 acres.

I find the locations of existing and planned wells in the proposed USP area prevent waste and afford each owner the opportunity to recover his or her just and equitable share of production from the USP, provided the SE ¼ of SE ¼ of Section 24 is excluded from the USP. I find the amended proposed USP area, with the exclusion of the SE ¼ of Section 13 and the SE ¼ of SE ¼ of Section 24, is reasonable and appropriate, and will constitute a USP under Order No. (A) 14-9-94.

6. Paragraph 8, Determination and Order, of Order No. 14-9-94 provides for exceptions to the spacing and

location requirements.

I find an exception to Order No. (A) 14-9-94 is warranted to provide for the distance between the Malpas D2-35 and D3-35 wells being less than 1,320 feet.

7. Petitioner's engineer testified:

a. The bottom hole locations of future wells will not be less than 1,320 feet from other bottom hole locations.

b. The bottom hole location of future wells will not be closer than 330 feet to the proposed USP boundary.

c. Well density within the proposed USP will not be less than eighty (80) acres per well.

I find additional wells may be necessary to adequately and efficiently drain the proposed USP. After the operator has gathered and analyzed sufficient production and test data from the existing wells, if additional wells are needed to adequately and efficiently drain the proposed USP, then such wells may be located and drilled consistent with this order and consistent with all other applicable statutory and regulatory requirements. Under no circumstances shall well density greater than one well per 80 acres be drilled on the proposed USP area.

7. Petitioner requested the use of a surface acreage basis to share production and allocate well costs in the proposed USP. Petitioner's engineer testified that while one Antrim well may produce gas at a higher rate than another well in the proposed USP, this does not mean there is more gas beneath the higher rate well.

I find allocation based upon surface acreage is the fairest and most equitable way to allocate to the various tracts in the USP each tract's just and equitable share of USP production and costs.

9. Petitioner's landman testified all interests in the proposed USP were subject to effective oil and gas leases held by Petitioner except for the following:

Name	Exhibit 4 Tract No.	Net Mineral Acreage
Timothy E. & Victra L. Baker	C12	1.60
Donald E. & Merilynn Brownell	C14	0.94
Rex A. & Donna L. Brownell	C14	0.94
Martha J. Taylor	C15	0.33
Martha J. Taylor	C16	0.20
Rex A. & Donna L. Brownell	C17	13.13

Martha J. Taylor	C18	0.20
Martha J. Taylor	C19	0.33
John M. McDonald Trust	C20	9.47
Martha J. Taylor	C21	0.26
Neil C. & Norma A. Misner	C24	1.00
Daniel Philip & Joanne L. Cote	E5	40.00
John S. Russell	F3	40.00
TOTAL		108.40

Petitioner's landman testified that Petitioner has made a diligent effort to obtain oil and gas leases covering the unleased interests.

I find Petitioner was unable to obtain leases for purposes of voluntary pooling. I find compulsory pooling of unleased interests is necessary to prevent waste and prevent the drilling of unnecessary wells, and that the unleased tracts described above should be pooled into the proposed USP.

10. I find the proposed USP will prevent waste, will prevent the drilling of unnecessary wells, and will permit each owner of an interest within the proposed USP the opportunity to receive their just and equitable share from the production therefrom.

11. I find all necessary conditions for forming a proposed USP and pooling all interests are satisfied and all interior drilling unit boundaries may be abrogated.

12. I find Petitioner should be named operator of the proposed USP.

13. Petitioner's Exhibit 9 sets out the estimated costs for drilling one Antrim well in the proposed USP. Petitioner's engineer testified the estimated dry hole costs were $77,080.00, the completion costs were $83,950.00, and the equipping costs were $56,215.00. The estimated

cost associated with drilling an Antrim well, including its proportionate share of facility costs, totals $217,245.00. Petitioner asked that actual and not estimated costs be used for purposes of computation of the additional compensation to be recovered from nonparticipating owners which should be allowed for the risk associated with this Antrim project.

I find this approach is appropriate, and accordingly, I find that a fair and equitable method of sharing costs with nonparticipating owners for drilling, completing and equipping the wells is on an actual cost basis, and the actual cost basis shall be used for purposes of computing compensation for the risk associated with the project.

14. Petitioner's engineer testified regarding the risks associated with drilling, completing and equipping Antrim wells in the proposed USP. Based on the results of the

drilling of wells in the USP Area, and their present production levels, he testified that the likelihood of these wells being economically successful depends upon the volume of gas the wells produce. Economic success will not be known for many years. The production of gas form the Antrim is dependent upon the presence of natural fractures which connect to the well bore. Not all Antrim wells in the same project will produce at the same rate because each may not encounter comparable fracturing. Some wells in an Antrim project may not produce a sufficient amount of gas to be economical on their own. In a producing area there exists the possibility that, due to glacial gouging, the Antrim may not be present, resulting in a dry hole.

I find in determining the risk associated with Antrim operations, it is necessary to consider not only the

likelihood of the well being completed as a producible well, but also the likelihood of the well being economically successful.

15. Petitioner's engineer sponsored Exhibit 11, an economic analysis of the impact on the operator of carrying unleased interests. It illustrates the costs to the operator for furnishing the money necessary to pay the unleased owner's proportionate share of drilling, completing and equipping expenses. Petitioner argued that the operator of the USP should receive sufficient compensation to cover a reasonable rate of return on the cost of the money it advances to pay the unleased owner's proportionate share of expenses, both for wells already drilled and for wells to be drilled in the future in the proposed USP.

16. Based on the testimony the Petitioner requested an additional 200 percent of drilling costs, 200 percent of completion costs and 200 percent of surface equipment costs be assessed to a nonparticipating owner's interest, as compensation to Petitioner for the risk of the project being uneconomical. Petitioner requested such compensation be assessed on the drilling, completing and equipping costs of the seventeen (17) wells drilled before the date of this Order, and on all future wells.

17. I find that it is necessary to consider the cost to Petitioner for money advanced to pay the unleased owner's proportionate share of expenses. However, I find that it is not reasonable to apply additional compensation for the costs of wells drilled prior to the establishment of the USP.

18. I find that the Antrim wells drilled prior to the formation of the proposed USP were drilled on legal drilling units. I find that the mineral interests in the drilling units at the time the wells were drilled were responsible for bearing the risks of the project being uneconomical. I find the unleased interests within the boundary of the proposed USP could not anticipate inclusion in the proposed USP prior to its establishment. I find it is not just and equitable to allocate additional compensation for risks of the project being uneconomical or for costs to the operator for advancing the unleased owner's share of expenses on wells drilled prior to the formation of the proposed USP to those interests pooled into the proposed USP by Order of the Supervisor. I find in fact that it is just and equitable that each interest pooled into the USP by Order of the Supervisor bear its proportionate share of the actual costs of drilling, completing and equipping the Antrim wells

drilled prior to the formation of the proposed USP.

19. I find the appropriate compensation from a nonparticipating owner for risks of the project being uneconomical and for costs to the operator for advancing the unleased owner's share of expenses should be 200 percent of actual drilling costs, actual completion costs and actual equipping costs, incurred after the effective date of this Order. Operating costs are not subject to additional compensation for the risk of the project and shall be allocated based upon the proportion that a nonparticipating party's acreage in the proposed USP bears to the total acreage in the proposed USP.

CONCLUSIONS OF LAW

1. Section 15, Findings of Fact of Order No. (A) 14-9-94, determined as a matter of fact:

> [B]ecause of the uniqueness of the Antrim and the manner in which it is developed, a large development area which is approved by the Supervisor can be considered a "pool" as defined in Act 61.

2. Section 17, Findings of Fact of Order (A) 14-9-94 found in part:

> [T]o prevent waste, an operator should have the flexibility, other than the more rigid 80-acre drilling units, to develop a USP based on the following criteria:

a. That it is developed using contiguous (common side) 40-acre building blocks;

b. That is consists of voluntarily or compulsory pooled tracts all under the operator's control.

3. Section 4, Conclusions of Law of Order No. (A) 14-9-94 held as a matter of law:

> [A]n area developed under a Uniform Spacing Plan (USP) can be considered a "pool" pursuant to Act No. 61. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. MCL 319.2(d)

4. The Supervisor determined in Section 4(G), Determination and Order of Order No. (A) 14-9-94, that:

An operator having unleased mineral interests within a proposed USP may utilize the compulsory pooling provisions in Section 13 of Act No. 61 by petitioning for a hearing.

5. Section 61513 of Part 615 of the NREPA provides in part:

> The pooling of properties or parts of properties is permitted, and if not agreed upon, the Supervisor may require pooling of properties or parts of properties in any case when and to the extent that the smallness or shape of a separately owned tract or tracts would, under the enforcement of a uniform spacing plan or proration or drilling unit, otherwise deprive or tend to deprive the

owner of such a tract of the opportunity to recover or receive his or her just and equitable share of the oil or gas and gas energy in the pool. [MCL 324.61513]

6. Section 8, Determination and Order, of Order No. (A) 14-9-94 provides that exceptions to the requirements of USPs may be granted after notice and hearing.

7. Petitioner argues that it is entitled as a Matter of Law to compensation for the risk associated with drilling a dry hole on Antrim Shale Formation wells drilled prior to formation of the USP. Petitioner relies on language in R 342.1206 (4)(b), which states:

(b) As to each well that the owner does not elect to participate in as provided in

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subdivision (a) of this subrule, if the well has been, or is subsequently, completed as a producer, authorize the operator of the well to take out of the nonparticipatory interest's share of production from the well the party's share of the costs of drilling, completing, equipping, and operating the well plus an additional percentage of the costs that the supervisor considers appropriate compensation for the risks associated with drilling a dry hole and the mechanical and engineering risks associated with the completion and equipping of each well. [1996 MR 9, R 324.1206(4)(b), emphasis added]

Plain reading of the above language indicates that on a well drilled prior to the formation of the USP, the allocation of compensation for risk associated with drilling a dry hole on a well previously drilled on a legal drilling unit is permissible. However, the above language cannot be read in isolation from the entirety of R 324.1204(4), which begins:

> After a hearing on a petition for an order to pool and after thorough consideration of the evidence and testimony presented, the supervisor shall either rule that pooling is not necessary to prevent waste or shall enter an order pooling the separately owned tracts and interests within the drilling unit . . . [1996 MR 9, R 324.1206(4), emphasis added]

Considering the emphasized language, it is evident that R 324.1206(4) applies only to allocation of compensation for risk associated with a dry hole drilled on a drilling unit formed by compulsory pooling. I conclude as a Matter of Law that R 324.1206(4) does not apply to situations of compulsory pooling to form USP's but only to compulsory pooling to form legal drilling units.

I also conclude as a Matter of Law that each interest compulsory pooled into the proposed USP as a result of a Supervisor's Order shall bear its proportionate share of the actual costs of drilling, completing, equipping and operating a well drilled on the proposed USP prior to the compulsory pooling. [MCL 324.61513(4)]

8. The Supervisor has jurisdiction over the subject

matter and the persons interested therein. Due notice of the time, place and purpose of the hearing was given as required by law and all interested parties were afforded an opportunity to be heard.

DETERMINATION AND ORDER

On the basis of the Findings of Fact and Conclusions of Law, the Supervisor of Wells determines the formation of the USP is appropriate, and pooling to form a full USP is necessary to prevent waste and to prevent the drilling of unnecessary wells.

NOW, THEREFORE, IT IS ORDERED:

1. A Uniform Spacing Plan is established covering the following lands:

SW ¼ of SW ¼ of Sec. 13; SW ¼ of Sec. 14; all of Sec. 23; NW ¼ of Sec. 24; NW ¼ of Sec. 25; all of Sec. 26; and all of Sec. 35, T31N, R6W, Jordan Township, Antrim County, Michigan.

The USP contains 2,440 acres.

2. O.I.L. Energy Corp. is appointed as operator of the USP and shall have control of all operations in the USP.

3. All interior drilling unit boundaries established prior to the date of this Order either by Administrative Rule 1979 AC, R 299.1201, 1996 MR 9, R 324.301, or by Order No. (A) 14-9-94 are abrogated.

3. This Opinion and Order applies only to the Antrim as defined in Section 2, Findings of Fact, Order No. (A) 14-9-94, which is incorporated here by reference.

5. All properties and parts of properties and unleased interests in the Antrim within the area of the USP are pooled; the pooling is solely for the purpose of forming a full USP and does not convey a right to operate on the surface of unleased land.

6. If a nonparticipating party has not, before the effective date of this Order, voluntarily agreed with Petitioner on a plan for development of the USP, said party shall have ten (10) days from the effective date of this Order to elect one of the following alternatives and advise the Supervisor of Wells, in writing, accordingly:

a. Pay to the Operator the nonparticipating party's share of the cost of drilling, completing and equipping all wells heretofore and hereafter drilled,

completed and equipped in the USP Area, or give bond for his, her or their share of such costs, for payment promptly upon completion, whether the wells are drilled as producers or dry holes; or

b. If within ten (10) days after the effective date of this order the nonparticipating owners do not pay their proportionate share of costs heretofore incurred and their proportionate share of estimated future costs or give bond therefore, authorize Petitioner to take from the nonparticipating owners' 7/8 share of production:

(i) The nonparticipating owners' proportionate share of the actual costs incurred for drilling, completing and equipping all Antrim wells drilled heretofore and hereafter in the USP;

(ii) An additional 200 percent of the costs attributable to the nonparticipating owners' proportionate share for drilling, completing and equipping Antrim wells in the USP applied only to such costs as are incurred after the effective date of this order, as compensation to the Petitioner for the risks associated with the project;

(iii) The actual costs of operating the Antrim wells attributable to the nonparticipating owners' proportionate share.

One-eighth (1/8) of the nonparticipating owners' proportionate share shall be paid as royalties and shall be free of all costs.

7. Operating costs are not subject to additional compensation for the risk of a dry hole.

9. In the event a nonparticipating owner fails to notify the Supervisor of Wells of a decision within ten (10) days from the effective date of this Order, the nonparticipating owner so failing shall be deemed to have elected the alternative described in paragraph 6b of the Determination and Order section above, and the operator may proceed with the drilling, completing, equipping and operating of wells in the USP on that basis. The unleased mineral interest of the nonparticipating owner shall be treated as a working interest owner to the extent of 7/8 of the pooled interest and shall be treated as a royalty interest to the extent of 1/8. This 1/8 royalty interest shall be free of any withholding for contribution for drilling, completing, equipping

costs and operating costs, including post production costs.

9. For purposes of electing alternatives, the amount of $217,245.00 is fixed for the estimated cost of drilling, completing, and equipping one well within the USP; however, actual costs shall be charged.

10. Production and costs of the USP shall be allocated on a surface acreage basis. Each tract shall share in the proportion its acreage bears to the total acreage in the USP.

11. Within two years form the date of this Order, the SE ¼ of Section 13 may be included in the USP if the operator demonstrates to the satisfaction of the Supervisor that such inclusion is necessary to effect efficient development and will prevent waste, and an Antrim well is drilled upon the

tract. The Supervisor may choose to add the SE ¼ of Section 13 to the USP without a hearing.

12. The Supervisor retains jurisdiction over this matter. Any amendments to the boundary of the USP other than that specified in Paragraph 11 of this Order shall be by Order of the Supervisor after notice to all interested parties.

13. An exception to the requirement of Order No. (A) 14-9-94 that all wells must be located at least 1,320 feet apart is established for the Malpas D2-35 and D3-35 wells.

14. The effective date of this Order shall be September 5, 1997.

Dated: 8-22-97

/s/HAROLD R. FITCH

HAROLD R. FITCH

ASSISTANT

SUPERVISOR OF

WELLS

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES

ORDER OF THE SUPERVISOR OF WELLS

IN THE MATTER OF ORDER NO. (A) 14-9-94

THE REQUEST OF MICHIGAN)

ENVIRONMENTAL TRUST LIMITED,)

MICHIGAN OIL AND GAS ASSOCIATION,)

ET. AL., FOR THE ADOPTION OF A)

SPECIAL SPACING ORDER FOR ANTRIM)

SHALE FORMATION GAS WELLS IN 22)

NORTHERN MICHIGAN COUNTIES)

OPINION AND ORDER

On November 14 and 15, 1994, January 17 and 18 and February 14, 1995, a contested case hearing was held before the Supervisor of Wells and the Oil And Gas Advisory Committee regarding the above-captioned matter. The hearing was held under the authority of the Supervisor of Wells Act, 1939 PA 61, as amended, MCL 319.1 et seq.;

MSA 13.139(1) et seq., and the administrative rules, 1979 AC, R 299.1101 et seq.[1] The hearing was conducted in accordance with the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560 (101) et seq. The purpose of the hearing was to consider the request of Michigan Environmental Trust Limited, et al., for an order pertaining to the need or desirability of adopting a special spacing order for the location and spacing of wells and the development of units or pooled areas in the Antrim Shale Formation (hereafter called "Antrim") in 22 northern Michigan counties.

FINDINGS AND FACT

1. The Parties requested the hearing cover 16 counties in northern Michigan. The scope of the hearing was expanded to 22 counties by the Supervisor, and includes:

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[1] By signature of the Governor May 23, 1995, the Supervisor of Wells Act, 1939 PA 61, as amended, MCL 319.1 et seq.; became Part 615 Supervisor of Wells of the Natural Resources and Environmental Protection Act, Act No. 451 of the Public Acts of 1994, as amended.

Alcona, Alpena, Antrim, Arenac, Bay, Benzie, Charlevoix, Crawford, Grand Traverse, Iosco, Kalkaska, Lake, Leelanau, Mason, Manistee, Missaukee, Montmorency, Ogemaw, Oscoda, Otsego, Roscommon and Wexford.

Based on the historical development of the Antrim, these counties have the highest concentration of wells and potential for development of Antrim gas.

2. For the purposes of this Order, the Antrim comprises the rock interval from the base of the Berea-Bedford sequence to the top of the Traverse Group and includes all formations correlative to that interval including the Ellsworth Shale of western Michigan.

3. The Antrim is a part of the eastern Devonian shales sequence found throughout much of the Michigan, Appalachian, and Illinois basins. It is an organically rich

shale of Devonian Age. In northern Michigan, the Antrim section ranges from 300 to 770 feet in thickness at subsurface depths ranging from less than 500 feet to approximately 1,500 feet. The Antrim is characterized by matrix permeability typically lower than one millidarcy. Extensive fracturing is required to create the necessary pathways for gas migration to the well bore. Economic production of gas is contingent on encountering such fracturing. Well logs show the presence or absence of fracturing is random. One well bore may reveal virtually no natural fractures, while another well less than a mile away may show extensive fracturing throughout the Antrim. Current geological and geophysical means cannot identify fractured areas without drilling test wells. Mr. J. Michael Gatens III, a petroleum engineer for S. A. Holditch & Associates, Inc., testified the Antrim is an unconventional, complex and unique reservoir. His description of the Antrim is:

. . . a low-permeability, organic-rich matrix rock which contains gas in a sorbed state. Free gas also exists in conventional pore space within the shale matrix and in the natural fractures. The shale matrix typically has very low permeability; permeability's have been measured on the order of 2 x 10 (-8) md. To achieve commercial production from these formations, natural fractures must exist (as a general rule) which allow the gas to migrate from the very low permeability matrix into the permeable natural fracture system, which then connect to the well bore and to induced hydraulic fractures created near the well bore.

I find, as a matter of fact, the Antrim is an uncoventional, complex, and unique gas reservoir.

4. More than 4,000 Antrim gas wells have been drilled in the geographic area covered by this proceeding. Michigan's Antrim gas development began in 1940 with

the Otsego Field in Section 34 of T30N R3W, Bagley Township, Otsego County. The Otsego Field was developed and produced under a special 160—acre spacing order. In the mid-1980s, Antrim gas began to experience significant development, due in part to the federal tax credit in Section 29 of the Internal Revenue Code. This development occurred under the existing 40-acre general rule spacing provisions. In 1992 alone, 1,189 Antrim wells were drilled. Although the federal tax credit ended in 1992, a significant number of wells continue to be permitted and drilled throughout the geographic area covered by these proceedings.

5. During the most recent years, Antrim gas wells have been characteristically, but not exclusively, developed as a group of wells or project basis rather than on an individual well basis. An Antrim gas well is rarely economical when developed individually. An Antrim

project would include: 1) several Antrim gas wells; 2) a common gas gathering system; 3) a central production facility where all gas from the project wells is collected, separated, compressed, dehydrated, metered and sold, and; 4) a facility and well where all formation water from the project wells is collected and disposed.

6. Dr. Donald Inman, Deputy Director Region II, Michigan Department of Natural Resources, testified that surface resources and their associated values must be considered within the scheme of orderly development of the Antrim gas resource. He testified agricultural lands, forests, lakes, rivers, streams, wetlands and their associated fish and wildlife are important surface resources which should be considered. Over 70 percent of the land area in these counties is forested. The principal surface impacts come with the installation of wells, production facilities, flow lines, and maintenance roads. These impacts include

forest fragmentation, loss of standing timber, disruption of the soil profile, reduction in forest aesthetics due to clearings, erosion and sedimentation impacting watercourses, infringement on threatened and endangered species habitat, aesthetic and noise pollution, and disruption of wetlands and other sensitive ecosystems. I find, as a matter of fact, minimizing surface impacts to prevent surface waste is a principal factor in considering the proper spacing scheme for development of Antrim gas.

7. In developing a proper spacing scheme it is important to consider the relationship between well density and ultimate recovery of gas. Two well-qualified Antrim reservoir experts, Mr. Marvin J. Schneider, an engineer and team leader for Shell Western E&P, Inc.'s (SWEPI) Antrim gas development, and Mr. Gatens, analyzed the impact of well density on ultimate recovery. Both experts used different data bases and computer reservoir simulators to

calculate ultimate gas recovery at different permeabilitys (sic)and well densities. I find both Messrs. Schneider's and Gatens' evaluations to be essentially the same. Both experts opined, and I find, the closer the well spacing, the greater the gas recovery efficiency.

8. Three witnesses presented evidence regarding the impact of average project well density on the operator's economic rate of return. Mr. Gatens testified there is a substantial increase in economic benefit by decreasing well density from one well per 40 acres to one well per 80 acres. He testified the operator's economics are optimized and virtually flat within an average well density range of 80 to 160 acres per well. Mr. Schneider supports this conclusion based on his study of SWEPI's Albert/Loud project in Montmorency County. For a project of uniformly average wells, or a project of uniformly poor wells, the maximum economic indicator is achieved at an

average well density of 120 acres per well. For a project of uniformly good wells, the optimum economic indicator is attained at an average well density of 160 acres per well. Mr. Sidney J. Jansma, Jr., President of Wolverine Oil and Gas Co. Inc., presented evidence demonstrating a 19.9 percent internal rate of return after taxes for a project developed on an average well density of 160 acres per well, and a 21.4 percent internal rate of return after taxes for a project developed at an average well density of 80 acres per well. I find an operator's economic rate of return is maximized and equal anywhere within the well density range between 80 and 160 acres per well.

9. Several of the parties suggested a continuation of 40-acre drilling units, or expressed a preference for 40-acre drilling units in special circumstances. The evidence shows the development of Antrim gas on 40-acre drilling units results in excessive

surface waste. The evidence also shows most Antrim wells will drain an area greater than 40 acres. The record shows well densities in Antrim development is tending toward more acres per well. This trend is attributed to the elimination of the Section 29 tax credit and the operators' increasing sophistication in developing the Antrim Shale. The trend cannot be ignored. The Supervisor rejects all proposals to continue 40-acre drilling units as operators' choice or to protect a 40-acre tract from actual or potential drainage. The Supervisor finds 40-acre drilling units cause waste and the drilling of unnecessary wells.

10. Several Parties supported 160-acre drilling units. The well could be located anywhere within the 160-acre unit but must be at least 330 feet from the unit line. Infill wells would be allowed, but could be located no closer than 990 feet from any other well on the drilling unit. At face value this proposal would seem to provide for one

well per 160 acres, but because of the geological nature of the Antrim and using conventional drilling techniques, infill drilling would in fact move towards densities of one well per 80 acres. Spacing at 160 acres per well would provide for more room and flexibility in using lateral drain hole technology. However, to date the use of this technology has been limited. Mr. Gatens testified that in comparing the ultimate recovery of 80-acre spacing to 160-acre spacing, the loss of ultimate recovery of gas in a section of land for a good well (one having 12 millidarcies of effective permeability) would be 1.6 billion cubic feet (BCF); for an average well (one having between 6 and 9 millidarcies of effectve permeability) would be 2.2 BCF and 2.8 BCF respectively; and for a poor well, (one having less than 6 millidarcies) would be 2.4 BCF. Mr. Jansma testified that when comparing 80-acre spacing to 160-acre spacing, the increased surface use caused by 80-acre average well density should result in 16.5 years of

production as compared to 23.5 years of production for 160-acre average well density. I find 160-acre spacing would result in significant loss of important natural gas resources and, therefore, would result in underground waste.

11. Mr. Gatens testified if the reservoir rock has poor producing qualities, then 80-acre drilling units are best from a recovery efficiency view point. However, for the 25 percent of the wells which have better reservoir quality, Mr. Gatens favors a drilling unit of 160 acres. Considering only economics and drainage efficiency, he would choose 120-acre drilling units if forced to make a choice. Given the technical evidence, the optimal spacing will usually fall within a range of 80 to 160 acres per well. Drilling units of 120 acres built on 40-acre quarter-quarter section blocks will not be adopted because this would result in drilling units that would radically deviate from the square or

rectangular shaped units common to oil and gas spacing. As a matter of historical application in the development of oil and gas, drilling units built from square 40-acre blocks which can abut one another and can form quadrate units is a fair and equitable approach. I find, using contiguous 40-acre building blocks to form large pooled areas allows for drill location flexibility, lesser well densities, and better use of well completion technology such as lateral drain holes.

12. Several Parties support 80-acre drilling units. Mr. Gatens testified although there was some loss of ultimate recoverable gas at 80 acre spacing as compared to 40-acre spacing, " . . . in terms of recovery efficiency, it is generally between 80 and 120 acres and in fact, in terms of recovery efficiency at comparable high economic performance, 80 acres is generally superior for the cases we investigated." The fact that 80-acre spacing would significantly reduce surface waste as compared to 40-acre

spacing in uncontested.

There is a conceptual problem, from a purely underground perspective, with a rectangular 80-acre drilling unit. However, the concept of an 80-acre rectangular drilling unit has enjoyed a long and fruitful history under Special Order 1-73, and is entirely workable for Antrim gas development. In fact, there is a distinct advantage to rectangular drilling units in the northern Antrim play. The flexibility offered in electing a stand-up or lay-down 80-acre drilling unit allows the operator of a project to configure the drilling units to accommodate many of the optimal surface locations that would otherwise be prohibited by the interior hard lines created under rigid 40-acre drilling units. I find, in most cases, 80 acres is the maximum area which may be efficiently and economically drained by one Antrim gas well. I find, 80-acre spacing for

development of Antrim Gas will minimize both surface and underground waste.

13. Testimony was consistent that 330 feet should be the set back distance of the bottom hole location of any Antrim gas well or extent of any lateral well drain hole. I find, the bottom hole location of any Antrim gas well bore, or the location of the end point of any lateral drain hole, should be no closer than 330 feet to a unit line to protect correlative rights.

14. The use of lateral drain hole technology for the development of Antrim gas is limited. Mr. Tinker of SWEPI suggested the Supervisor be consistent with a previous order, Order No. 10-12-87, providing the completion of lateral drain holes does not require a permit. That order also grants an unlimited number of lateral drain

holes; under the facts and circumstances of this case, that grant is too broad. The potential for multiple drain holes from one well will increase over time and there is a need to provide reasonable controls to assure the protection of correlative rights and to minimize well communication. I find two (2) lateral drain holes within the Antrim may be completed from any one well bore without a permit or a hearing provided the end point of the drain hole is no closer than 330 feet of the drilling unit line as shown on a well bore survey identifying the course and end point of the drain, and the operator obtains a Change of Well Status approval from the Supervisor. Additional drain holes may be allowed only after a hearing before the Supervisor.

15. As discussed is Findings of Fact 5, Antrim gas is usually developed on a project basis rather than on a well-by-well basis. A typical Antrim project involves combining multiple tracts of land by private agreement into

large development areas. These Antrim projects range in size from 400 to 9,000 acres. Many projects are between 1,200 and 2,400 acres. Antrim projects are assembled, in part, based on the landowners, lessors, and lessees agreeing to sign a private agreement. Such an agreement essentially establishes the Antrim project area. As a result, the geographic descriptions of many Antrim projects are highly irregular. The operator develops an Antrim project by applying for drilling permits on 40-acre drilling units (pursuant to existing spacing) located within the Antrim project area. Neither the agreement nor the geographic description of the Antrim project is reviewed or approved. Not every 40-acre drilling unit inside an Antrim project is actually drilled. Production is shared with owners of undrilled lands inside the Antrim project. The net result of such an Antrim project is a lower well density (a more recent density near 100 acres per well) than would be developed strictly on a 40-acre drilling unit basis. It is

recent common practice of the Geological Survey Division to review applications of proposed wells in an Antrim project on a group basis rather than on a well-by-well basis. The operator's plan normally includes the proposed location of wells, access roads, flow lines, and associated processing equipment. I find the continued practice of reviewing Antrim gas well applications on a project basis, rather than on a well-by-well basis, will minimize surface impacts thereby minimizing surface waste. I find, as a matter of fact, because of the uniqueness of the Antrim and the manner in which it is developed, a large development area which is approved by the Supervisor can be considered a "pool" as defined in Act No. 61.

16. Among the proposals presented to the Supervisor is the concept of the "Antrim Developed Area" (ADA). An ADA would consist of an area of contiguous quarter-quarter sections of land which have been

voluntarily or compulsorily pooled. Presuming 80-acre spacing is adopted, an operator could exclude lands within the ADA boundary ("islands") if the excluded lands are comprised of two or more contiguous quarter-quarter sections. Proponents of the ADA suggest that the Supervisor could certify an ADA upon the submission of documentation showing the outer boundary of the ADA, showing that the interests within the ADA were voluntarily or compulsorily pooled (except excluded "islands" as previously noted), and showing that the well density within the ADA is at most one well per 80 acres. If certified, then setbacks resulting form individual drilling units within the ADA (except "islands") would be automatically abrogated. The operator would be permitted to drill additional wells at any location within the ADA no closer than 330 feet from an ADA boundary or no closer than 1,200 feet between wells, until the average density reached one well per 80 acres. There were various suggestions, ranging from 990 to

1,320 feet, relating to the minimum distance that should be allowed between bottom hole locations of wells. The maximum distance possible should be adopted to minimize the potential of well communication. Several witnesses testified that because of the unique productive characteristics of the Antrim Shale and the potential to minimize surface waste, a special regulatory approach such as the ADA must be adopted. Dr. Inman testified that to reduce surface impacts it is important to minimize the overall well density and ensure orderly development. He supports the concept of developing project areas. Dr. Inman further supports the elimination of project area interior setbacks which result from individual drilling requirements of each drilling unit. He testified the elimination of interior setbacks would provide for even greater flexibility in locating wells, thus significantly reducing surface impacts. I find, as a matter of fact, developing Antrim gas as a group of wells or a project

basis provides for limiting well density and minimizing the number of associated surface facilities, thus minimizing surface waste. However, the ADA proposal is rejected for the following reasons. First, the ADA 1,200 foot minimum distance between wells requirement could result in wells being too clustered or concentrated and increases the potential for well communication. Second, the ADA proposal has the potential to exclude blocks of land 80 acres in size resulting in the creation of "islands" which may not be economical to produce by themselves. As the ADA is developed and produced, the potential for draining gas from under these "islands" increases significantly. This result diminishes the protection of correlative rights.

17. I find the ADA concept meets the intent of a "uniform spacing plan" (USP) as provided in Act No. 61 and provides for maximizing gas recovery and minimizing surface and underground waste. I find it is reasonably necessary to provide flexibility in the locating of Antrim

gas wells in the 22 counties because topographical and other surface conditions make drilling at a regular location unduly burdensome and imminently threatening to water and other natural resources. I find, to prevent waste, an operator should have the flexibility, other than the more rigid 80-acre drilling units, to develop a USP based on the following criteria:

A. That it is developed using contiguous (common side) 40-acre building blocks.

B. That it consists of voluntarily or compulsorily pooled tracts all under the operator's control;

C. That the distance between bottom hole location of wells is no less than 1,320 feet;

D. That it ensures well density within the USP is no less than 80 acres per one well, and;

E. That it has bottom hole location of wells located no closer than 330 feet to the USP boundary.

I find that the elimination of USP interior setbacks resulting from individual drilling unit requirements would provide for greater flexibility in locating wells, thus significantly reducing surface and underground waste.

18. Various proposals were made for exempting from the authority of this Order those lands previously developed on 40-acre drilling units. I find drilling units for wells which received a permit prior to the effective date of this Order are exempt. All drilling permits issued for 40-acre drilling units before the effective date of this Order

may continue as established drilling units. Such wells may be drilled and the drilling unit shall be the 40 acres as identified by the drilling permit application.

Well permit applications filed prior to the effective date of this Order (hereafter referred to as "pending applications") may very well fit into the established spacing or USP established in this Order. I find the end result of any permit issued form a pending application must ultimately comply with spacing and other requirements of this Order. I find an operator who has a pending application may:

1. Withdraw the application;

2. Amend the application to comply with the spacing and other provisions of this Order, or;

3. Elect to allow the pending application to be processed as submitted (hereafter referred to as an "Item 3 Well").

Pursuant to existing requirements and procedures, any well permit issued is automatically terminated one year after issuance if the well is not drilled; the Supervisor after reviewing well data and classifying a well as a gas well may transfer the regulation of gas production from a gas well to the Michigan Public Service Commission (MPSC); the Supervisor may allow a permittee to test gas wells before being transferred to the MPSC; and wells that are dry or have not produced in 12 consecutive months must be plugged. Pursuant to the statute, the Supervisor may issue "Certificates of Clearance" and declare gas produced in violation of the statute, rules, or orders as "illegal gas." There must be administrative safeguards for an "Item 3 Well" to ensure compliance with existing statute and rule

requirements and timely compliance with this Order. I find that:

A. An "Item 3 Well" permit is automatically terminated if not drilled within one (1) year of the date of issuance.

B. An "Item 3 Well" which has not complied with the spacing and other provisions of this order within 24 months of reaching total depth shall be plugged unless the Supervisor grants temporary abandonment status.

C. A Permittee shall not produce, transport, or sell gas from and "Item 3 Well" without a Certificate of Clearance issued by the Supervisor. Any gas produced without a Certificate of Clearance is declared illegal gas.

D. The Supervisor will not transfer regulation of gas production of an "Item 3 Well" to the MPSC until the well is in compliance with the spacing and other provisions established by this Order.

E. "Item 3 Wells" shall be allowed a one-time production test of up to 30 consecutive days.

19. Certain Parties requested the Supervisor "announce" in this Order the appropriate compensation for the risk of a dry hole to be applied in connection with future Antrim gas well compulsory pooling proceedings. This suggestion must be rejected because every compulsory pooling proceeding is factually specific and the appropriate compensation for the risk of a dry hole is determined upon the facts of each case.

CONCLUSIONS OF LAW

1. Section 13 of Act No. 61 states, in part, as follows:

> The drilling of unnecessary wells is hereby declared waste as such wells create fire and other hazards conducive to waste, and unnecessarily increase the production cost of oil and gas to the operator, and thus also unnecessarily increase the cost of the products to the ultimate consumer.
>
> To prevent the drilling of unnecessary wells the supervisor . . . may fix a drilling unit for each pool. A drilling unit, as contemplated herein, means the maximum area which may be efficiently and economically drained by 1 well and such unit shall constitute a developed area as long as a well is located thereon which is capable of producing the

economically recoverable oil or gas thereunder. MCL 319.13.

2. Subject to limited exceptions, the drilling unit size for Antrim gas wells in the 22 counties subject to this proceeding is set at 40-acre quarter-quarter sections of land under Rule 1979 AC, R 299.1201. Based upon the Findings of Fact, I conclude, as a Matter of Law, that 40-acre drilling units for Antrim gas wells create waste in the drilling of unnecessary wells and in excessive surface disturbance.

3. I conclude, as a Matter of Law, in most cases the maximum area which may be efficiently and economically drained by one Antrim gas well is 80 acres.

4. I conclude, as a Matter of Law, an area developed under a Uniform Spacing Plan (USP) can be considered a

"pool" pursuant to Act No. 61. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. MCL 319.2(d).

5. Section 6 (a) of Act No. 61 directs the Supervisor of Wells to prevent the waste prohibited by Act No. 61. To accomplish this purpose, the Supervisor is empowered to: make and enforce rules . . . issue orders and instructions necessary to enforce such rules and to do whatever may be necessary with respect to the subject matter stated herein to carry out the purposes of this act, whether or not indicated, specified, or enumerated in this or any other section hereof. MCL 319.6(a).

6. Section 6(j) of Act No. 61 empowers the Supervisor to fix the spacing of Wells. MCL 319.(6) (j)

7. I conclude, as a Matter of Law, Antrim gas

developed pursuant to a "Uniform Spacing Plan" prevents economic, surface, and underground waste.

8. Section 13 of Act No. 61 authorizes the Supervisor to approve exceptions to a uniform spacing pattern as may be reasonably necessary, and after notice and hearing, where topographical or other conditions make drilling at a regular location unduly burdensome or imminently threatening to water or other natural resources. Based on the Findings of Fact, I conclude it is reasonably necessary to provide exceptions to a uniform spacing pattern. I conclude, USPs as provided in this Order, are reasonably necessary. I conclude the elimination of "hard lines" within an area under an approved USP will prevent surface waste by allowing the operator more flexibility in avoiding environmentally sensitive surface features.

9. Section 13 of Act No. 61 provides in part:

> The pooling of properties or parts thereof shall be permitted, and, if not agreed upon, the supervisor . . . may require such pooling in any case when and to the extent that the smallness or shape of a separately owned tract or tracts would, under the enforcement of a uniform spacing plan or proration or drilling unit, otherwise deprive or tend to deprive the owner of such tract of the opportunity to recover or receive his just and equitable share of the oil and gas and gas energy in the pool. MCL 319.13.

I conclude, as a Matter of Law, an operator having unleased mineral interests within a proposed USP may utilize the provisions of section 13 of Act No. 61 to require pooling of these interests.

10. Section 14 of Act No. 61 provides: "The supervisor shall have authority to issue certificates of clearance or

tenders whenever the same may be required to effectuate the purposes of this act." MCL 319.14.

11. Section 15 of Act No. 61 provides:

> It shall be unlawful for any person to sell, purchase, acquire, transport, refine, process or otherwise handle or dispose of any illegal oil or gas in whole or in part, or any illegal product of oil or gas. A penalty or forfeiture shall not be imposed on account of any such act until certificates of clearance or tenders have been required by the supervisor as provided in section 14. MCL 319.15.

12. Section 6(o) of Act No. 61 authorizes the Supervisor to make rules for the classification of wells as oil or gas wells. MCL 319.6(o).

DETERMINATION AND ORDER

WHEREFORE, based on the Findings of Fact and Conclusions of Law, the Supervisor of Wells finds a special spacing order is necessary to prevent waste.

NOW THEREFORE IT IS ORDERED:

1. This Order applies to the following counties: Alcona, Alpena, Antrim, Arenac, Bay, Benzie, Charlevoix, Crawford, Grand Traverse, Iosco, Kalkaska, Lake, Leelanau, Mason, Manistee, Missaukee, Montmorency, Ogemaw, Oscoda, Otsego, Roscommon, and Wexford.

2. After the effective date of this Order, the following spacing options are in effect:

A. The drilling unit established shall be on

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eighty (80) acres, more or less, formed by combining blocks of two governmental surveyed quarter-quarter sections of land with one common boundary of approximately 1,320 feet, with allowances being made for the differences in the size and shape of sections as indicated by official governmental survey plats. The bottom hole location of the well bore shall not be closer than 330 feet from the drilling unit line. A declaration of the unit must be indicated on the application for a drilling permit. An operator may designate whether these 80-acre units will be stand up or lay down.

B. For the purpose of providing greater flexibility in locating wells to minimize surface waste and drilling of unnecessary

wells, an operator may develop a uniform spacing plan (USP) approved by the Supervisor or unitize pursuant to the Michigan unitization law.

3. A USP may be approved and considered a pool if:

A. The proposed USP is formed by combining blocks of governmental surveyed quarter-quarter sections of land with one common boundary of approximately 1,320 feet with allowances being made for the differences in the size and shape of sections as indicated by official governmental survey plats.

B. The operator files a certified statement that all oil and gas mineral ownership within the proposed USP boundary is owned or leased

by the operator.

4. The following requirements apply to drilling permits and the location of wells within an approved USP:

A. The operator of the USP is the only person eligible for a permit to drill and operate an Antrim gas well within the USP.

B. The course or endpoint of a well bore or lateral drain hole within the Antrim shall be no closer than 330 feet of a USP boundary.

C. The distance between bottom hole locations for standard vertical or conventional directional drilled wells within a USP shall be no less than 1,320 feet. Lateral drain holes drilled for completion purposes in

conjunction with these wells are excluded from this requirement.

D. The number of wells within the USP shall be limited to the total number of acres in the USP divided by 80.

E. The operator shall develop a USP as a project consisting of several wells. A project plan shall be submitted with the permit applications. The project plan shall show, at a minimum, the proposed location of the wells, flow lines, access roads, and associated primary processing facilities. Areas where access roads and flow lines cross surface water, and regulated wetlands shall be identified.

F. Changes to a USP boundary shall require written approval by the Supervisor.

G. An operator having unleased mineral interests within a proposed USP may utilize the compulsory pooling provisions in Section 13 of Act No. 61 by petitioning for a hearing.

H. Once a USP is approved, all interior hardline drilling unit boundaries are abrogated.

5. Two (2) lateral drain holes within the Antrim may be completed from any well bore without permit or hearing provided the drain hole does not extend closer than 330 feet of the drilling unit or USP boundary. Such drain holes must receive "change of well status" approval prior to beginning lateral drain hole operations. A survey

identifying the course and end point of the drain hole accompanied by all wireline, strata evaluation, and other logs shall be filed with the Supervisor within 60 days of completion of a lateral drain hole. In accordance with existing rule, a well shall not be produced until these records have been filed with the Supervisor.

6. All drilling permits issued for units established before the effective date of this Order may continue as established. Such wells may be drilled and the drilling unit shall be appropriately identified by the drilling permit application. Drilling units established by other previous orders shall continue pursuant to those orders. However, any of these pre-permitted or established drilling units that are incorporated into an approved USP shall be included in calculating the well density limitation set by paragraph 4 (D) previously noted.

7. An operator who has an Antrim well permit application pending at the effective date of this Order may elect to:

A. Withdraw the application;

B. Amend the application to comply with spacing and other provision of this Order, or;

C. Allow the pending application to be processed as an "Item 3 Well" as detailed in section 18 of the Findings of Fact. An "Item 3 Well" permit is automatically terminated if not drilled within 12 months of the date of issuance. An "Item 3 Well" which has not complied with the spacing and other provisions of this order within 24 months of reaching total depth shall be plugged unless

the Supervisor grants temporary (sic) abandonment status. A Permittee (sic) shall not produce, transport, or sell gas from an "Item 3 Well" without a Certificate of Clearance issued by the Supervisor. Any gas produced without a Certificate of Clearance is declared illegal gas. The Supervisor will not transfer regulation of gas production of an "Item 3 Well" to the MPSC until the well is in compliance with the spacing and other provisions established by this Order. An "Item 3 Well" shall be allowed a one-time production test of up to 30 consecutive days.

8. Exceptions to the spacing and location requirements of this Order may be granted after notice and hearing.

DATE: 6/20/95 /S/R. THOMAS SEGALL

R. THOMAS SEGALL

ASSISTANT SUPERVISOR

OF WELLS

JORDAN VALLEY

MANAGEMENT PLAN

1975

JORDAN RIVER STATE FOREST

Prepared by:

Forestry Division, Michigan Department of Natural Resources

with cooperation from other Department of Natural Resources divisions, Department of Highways and Transportation, Soil Conservation Service, and Antrim County.

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The development and extraction of mineral deposits within the Jordan Valley is not in keeping with the goals set forth herein or the intent of the Wild Scenic River designation of the Jordan River. It shall be the policy of the Department of Natural Resources not to permit exploration for, or extraction of, any surface minerals within the Jordan Valley.

Subsurface minerals (oil and gas) will be held in the public trust and leased only on a non-development basis. No exploration or development is now permitted.

STATE OF MICHIGAN

DEPARTMENT OF ENVIRONMENTAL QUALITY

SUPERVISOR OF WELLS

IN THE MATTER OF

CAUSE NO. (A) 14-5-97

THE PETITION OF O.I.L. ENERGY CORP.)

FOR AN ORDER OF THE SUPERVISOR)

APPROVING A UNIFORM SPACING PLAN AND)

COMPULSORY POOLING INTERESTS, IN PARTS)

OF JORDAN TOWNSHIP, ANTRIM COUNTY)

NOTICE OF HEARING

Take notice that a contested case hearing will be held before the Supervisor of Wells in the city of Lansing, Michigan, on the SEVENTH DAY OF MAY (May 7) 1997, BEGINNING AT 9:30 A.M., IN THE DEPARTMENT OF ENVIRONMENTAL QUALITY

HEARING ROOM, THIRD FLOOR OF KNAPP'S OFFICE CENTRE, CORNER OF WASHINGTON AVENUE AND WASHTENAW STREET, LANSING, MICHIGAN. The hearing will be conducted pursuant to Part 615, Supervisor of Wells, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451,as amended, MCL 324.61501 et seq., the administrative rules, 1996 MR 9, R 324.101 et seq., and the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560 (101) et seq.

The hearing is for the purpose of receiving testimony and evidence pertaining to the need or desirability of issuing an order in the matter of the petition of O.I.L. Energy Corp., 954 Business Park Drive, Suite 3, P.O. Box 1073, Traverse City, Michigan 49685-1073. Petitioner seeks an order of the Supervisor approving a proposed Uniform Spacing Plan USP), for development of the Antrim Shale Formation,

pursuant to the applicable spacing order, Order No. (A) 14-9-94. Petitioner also requests to be named operator of the USP, sometimes referred to as the "Jordan 35 Unit." The area of the USP is comprised of 2,760 acres. Petitioner has drilled seventeen (17) wells, and plans to drill at least two (2) additional wells, within the area of the USP. Petitioner asserts it has been unable to achieve voluntary pooling of all interests and seeks compulsory pooling of all interests in the USP pursuant to Section 61513, Part 615 of the NREPA.

The area of the USP is described as SE ¼, and SW ¼ of SW ¼ of Sec. 13; SW ¼ of Sec. 14; all of Sec. 23; NW ¼ of NE 1/4, NW ¼, SE ¼ of SW ¼, and S ½ of SE ¼ of Sec. 24; NW ¼ of Sec. 25; all of Sec. 26; and all of Sec. 35, Jordan Township, T31N, R6W, Antrim County, Michigan.

You can obtain a copy of the written petition by requesting one in writing from Mr. Dennis T. Couturier, C.A.P. Land Company, 954 Business Park Drive, P.O. Box 1557, Traverse City, Michigan 49685, telephone number 616-933-3800. Take note that if you wish to participate as a party in the hearing by presenting evidence or cross-examining witnesses, you shall prepare and mail or otherwise deliver to the petitioner and Supervisor, not less that 5 days before the hearing date, an answer to the petition in the manner set forth in R 324.1204(6). Proof of mailing or delivering the answer shall be filed with the Supervisor on or before the date of the hearing. The answer shall state with specificity the interested person's position with regard to the petition. Failure to prepare and serve an answer in a timely manner shall preclude you from presenting evidence or cross-examining witnesses at the hearing. If an answer to the petition is not filed, the supervisor may elect to consider the petition and enter an

rder without oral hearing.

ersons with disabilities needing accommodations for
ffective participation this hearing should call or write Mr.
Gordon L. Lewis, Geological Survey Division, P.O. Box
0256, Lansing, Michigan 48909, telephone 517-334-6959
t least a week in advance of the hearing date to request
nobility, visual hearing, or other assistance

Dated: 4-3-97

/s/HAROLD R. FITCH

HAROLD R. FITCH

ASSISTANT SUPERVISOR

OF WELLS

Questions regarding Notice of Hearing should be directed
to Gordon L. Lewis, Geological Survey Division,
Department of Environmental Quality, P.O. Box 30256,
Lansing, Michigan 48909, 517-334-6959.

STATE OF MICHIGAN

DEPARTMENT OF ENVIRONMENTAL QUALITY

SUPERVISOR OF WELLS

In the matter of:

THE PETITIONOF O.I.L. ENERGY CORP.

FOR AN ORDER OF THE SUPERVISOR CAUSE NO.

(A) 14-5-97 APPROVING A UNIFORM SPACING

PLAN AND COMPULSORY POOLING INTERESTS, IN

PARTS OF JORDAN TOWNSHIP, ANTRIM COUNTY

HEARING

May 7, 1997

209 South Washington Avenue

Lansing, Michigan

BEFORE – CHARLES R. TOY, P-33116

Hearing Officer

Appearances – JAMES R. NEAL, P-24265

Attorney for Petitioner

STEPHEN F. SCHUESLER, P-23658

Assistant Attorney General

Attorney for Respondent

Also present - Daniel Crawford

Greg Fogle

Kent Fink

Gina Parks Klco

Lynne Boyd

David Spalding

Jonathan Washington

John Russell

Gordon Lewis

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KENT FINK

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STATEMENT BY MR. RUSSELL

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Petitioner Exhibit 1 (Michigan map)

Petitioner Exhibit 2 (Revised legal description of Jordan 35 USP)

Petitioner Exhibit 3 (Jordan 35 USP)

Petition Exhibit 4 (Map of Jordan Twp)

Petitioner Exhibit 5 (Map of Jordan Twp)

Petitioner Exhibit 6 (Attempts to secure oil/gas leases)

Petitioner Exhibit 7 (List of landowners)

Petitioner Exhibit 8 (O.I.L. Energy Corp.)

Petitioner Exhibit 9 (Dry hole costs)

Petitioner Exhibit 10 (Surface casing map)

Petitioner Exhibit 11 (Drilling Chart)

(Exhibits retained by Hearing Officer)

(Hearing scheduled to start at 9:30 a.m.; actual start time was 9:48 a.m.)

(Petition Exhibits 1 through 7 marked)

HEARING OFFICER: Good morning. My name is Charles Toy. I'm an Administrative Law Judge on contract for the Department of Environmental Quality. We're here on the petition of O.I.L. Energy Corporation for an order of the supervisor approving a uniform spacing plan and compulsory pooling interests in parts of Jordan Township, Antrim County. This hearing is being held under authority of Act

451 of 1994, part 615, Supervisor of Wells, and it will be conducted pursuant to the Administration Procedures Act of 1969, which is Public Act 451 of 1994. That's including the amendments, then.

Holding this hearing is Mr. Harold R. Fitch, who is the assistant supervisor of wells. Other geological survey staff members here are Mr. David Davis, Mr. Michael Bricker and Mr. Thomas Wellman. The Notice and Service of Notice and Affidavits of Publication have been reviewed and appear

in order. The mailing, according to the Proof of Service or Affidavit of Mailing, was sent on April 8th, 1997, and the Notice of Hearing also was published in the Michigan Oil & Gas News April 11th and also in the Antrim County News on April 9th, 1997, so all those are within the time frame set out in the Act and are proper.

The Department of Natural Resources has filed an answer in this matter and, therefore, this hearing is being held as an evidentiary hearing as stated in Rule 1205(1)(b), and that is one of the local interest or

local concern. Filing appearances in this case are the Petition, Mr. James Neal, Esquire, who represents O.I.L., and also Mr. Stephen F. Schuesler, Assistant Attorney General, who is representing the Michigan Department of Natural Resources. Both of these person are full participants at this point because they have filed an answer. However, which means - - let me just explain. A full party means that they can enter exhibits, call witnesses and cross-examine witnesses.

There is one other appearance by Mr. John Russell, and this appearance is made today without an answer. So

17 therefore, you, sir, will be allowed to make a statement at
18 the end of the proceeding, whatever statement you wish to
19 make after you hear all the evidence and hear or see all
20 the exhibits that have been introduced. So with that, Mr.
21 Neal, are there any other matters?
21 MR. NEAL: There is a preliminary matter consisting of
22 the request by the Petitioner to amend its petition. I
23 will refer to a map which will be admitted into evidence as
24 Exhibit 4 in the proceeding. Exhibit 4 is a map of the
25 proposed USP with the tract numbers - - the tracts within

the USP numbered and lettered. The Exhibit 4 will not show two tracts that were initially - - three tracts that were initially covered by the petition, but which we request the petition be amended and these three tracts should be deleted from the USP. The tracts are designated as the northwest quarter of the northeast quarter of Section 24, the southwest quarter of the southeast quarter of Section 24, and the southeast quarter of the southwest quarter of Section 24.

On Attachment B of the petition, those three tracts

were designated as tracts D5 - - pardon me - - D3, and D5 and D6.

An answer was filed by the owner of tracts D5 and D6. And

Mr. Schuesler can state the position of the owner of those

tracts. The owner of tracts D5 and D6 of record is the

State of Michigan, and the petition as filed requested that

the supervisor of wells compulsory pool those unleased

tracts into the USP.

We are amending out petition to delete the two State

of Michigan unleased tracts from the USP and, as a result,

we are amending our petition to request that the supervisor take no action to compulsory pool any State - - unleased State acreage into the USP. There are other tracts within the USP that are owned by the State of Michigan. Those tracts are subject to currently effective State of Michigan oil and gas leases, and the amended petition has no effect

on those tracts. Those tracts will stay in the USP as petitioned and will be subject to the Order of the supervisor issued pursuant to this proceeding.

Tract D3 on Attachment B of the petition is a

private - - privately owned tract. And I will - - I'm asking to have that tract deleted from the USP from the petition, and our land man will testify as to the reasoning for that tract being deleted. So that is the request of the supervisor - - pardon me - - that is our request to the supervisor, to amend the petition and - - with respect to the State of Michigan's acreage and the southeast of the southwest.

HEARING OFFICER: Mr. Schuesler?

MR. SCHUESLER: Yes. Stephen Schuesler, Assistant

Attorney General, on behalf of the Department of Natural Resources. With me at the council (sic) table is Mr. David Spalding of the Forest Management Division of the Department. And also in attendance is Ms. Gina Klco and Ms. Lynne Boyd of the Department of Natural Resources. We join in the request of the Petitioner to drop, to delete tracts D5 and D6 from the petition. And we understand that the request is granted to be unconditional and, if granted, we will not participate in the hearing. And we take - - the Department takes no position on the configuration of any

25 USP which may result from this hearing. We just understand

1 that the State of Michigan tracts D5 and D6 will not be
2 included in any USP. If we can have that assurance, we can
3 save some time for DNR staff.
4 MR. FITCH: If that's deleted from the petition, then
5 it's not an issue which we can consider under an Order, so
6 I don't believe that we'll be - - it won't even be under
7 consideration.
8 MR. SCHUESLER: Thank you, Mr. Fitch.
9 MR. NEAL: I have overlooked one item. And just to

make certain there are not problems, two the wells that were drilled pursuant to 40-acre drilling units in this USP are closer than 1320 feet together, and they are in the far south of this. On the far south of the USP, there are four wells, one drilled on each of the 40-acre quarter sections. The center two wells, the D3-36 - - well, I can't read - - The D3-36 and D3-3- - - D2 and D3-35 wells are closer than 1320. That's also a requirement of the Antrim spacing order, and we will be requesting an amendment for as to

those two wells, that the supervisor grant that as an exception, that both of those wells can produce on the USP even though they're closer than 1320.

HEARING OFFICER: At this point because the State of Michigan is still a party, do you have any position on Those at all?

MR. SCHUESLER: No. The Department of Natural

Resources does not perceive well spacing as being a DNR issue. It's a DEQ issue. We take no position on that.

HEARING OFFICER: Well, with those stipulations, then,

number one, a petition can be amended orally at a hearing as long as it is an amendment of inclusion versus an exclusion. In other words, the Notice and the Service went out to everyone within the proposed unit and, as a result, those people could be here if they want. And at this hearing now, we're saying those people no longer need to be here, which in this case happens to be the State of Michigan represented by Mr. Schuesler. So I don't think - - I think it's proper, number one, and you have authority to amend it orally.

And with that, then, the single answer that was

15 received, does that mean then, Mr. Schuesler, that you
16 would withdraw your answer and not participate as a party
17 in this proceeding?
18 MR. SCHUESLER: That's correct. The only objection in
19 the answer to the petition was the forced pooling of tracts
20 D5 and D6, and that's no longer an issue. And so we will
21 Not participate in the hearing and the reason for our
22 Objection is no longer valid.
23 HEARING OFFICER: Okay. Then I'll grant that
24 amendment by the Petitioner that the petition now has
25 deleted D5 and D6. And, additionally, we

26 understand the

RECORDER'S CERTIFICATE AND NOTARIZATION

I, Rebecca J. Kerr, Court Recorder, do hereby certify that the foregoing is a true and accurate transcription of the electronic recording made and recorded at the time and place of the above hearing, and is all the same so far as pertains thereto.

/s/ Rebecca J. Kerr

Rebecca J. Kerr, CER-5154

Notary Public

My commission expires 6-14-2000